

Supreme Court No. 84108-0

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**SUPREME COURT
OF THE STATE OF WASHINGTON**

BY RONALD R. CARPENTER

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NEIGHBORHOOD ALLIANCE OF SPOKANE COUNTY,
a non-profit corporation,

Petitioner,

v.

COUNTY OF SPOKANE,
a political subdivision of the State of Washington.

Respondent.

FILED
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STATE OF WASHINGTON

**SUPPLEMENTAL BRIEF
OF PETITIONER NEIGHBORHOOD ALLIANCE**

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I. INTRODUCTION

Plaintiff Neighborhood Alliance of Spokane County (“Alliance”) is a community-based organization in Spokane that emphasizes government accountability, especially in land use and planning issues. CP 91. In February 2005, the Alliance had reason to believe Spokane County may have engaged in illegal hiring practices. *Id.* In order to confirm or dispel its concerns, the Alliance filed a public records request under the state’s Public Records Act (PRA), chapter 42.17 RCW.¹ In response, the County refused to conduct a good faith search, potentially destroyed records, and successfully resisted discovery for two years to avoid disclosure.

II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED

The Alliance’s Assignments of Error

1. The Court of Appeals erred in denying the Alliance’s motion to compel by finding its discovery exceeded that allowed under the federal Freedom of Information Act (“FOIA”).
2. The Court of Appeals erred in affirming summary judgment for the County in reliance on FOIA’s prevailing party doctrine.

The County’s Assignments of Error²

1. The Court of Appeals erred in finding the County’s search for records responsive to Item 1 was inadequate.

¹ Effective July 1, 2006, the Public Records Act was recodified at chapter 42.56 RCW. This case arose in May 2005, prior to recodification, and therefore citations are to the code as it existed at that time.

² Pursuant to RAP 13.7(b), the Alliance addresses herein the issues raised in the County’s answer/cross-petition.

2. The Court of Appeals erred in remanding for a finding of penalties as to Item 1 where there is no evidence the Alliance was denied access to responsive records.

Issues Pertaining to Assignments of Error

Issues Pertaining to the Alliance's Assignments of Error

1. Whether the Alliance and other plaintiffs in PRA actions are entitled to the same scope of discovery allowed other civil litigants under Washington's civil discovery rules.
2. Whether a plaintiff is a prevailing party under the PRA where the defendant agency wrongfully withheld documents at the time of request but released the same prior to suit in response to a different public records request.

Issues Pertaining to the County's Assignments of Error

1. Whether an agency search is inadequate where the agency fails to search the one place the record sought may be found.
2. Whether Washington law allows PRA penalties to accrue where an agency conducts an inadequate search and is thus unable to prove the nonexistence of responsive records.

III. STATEMENT OF THE CASE

The Alliance incorporates by reference herein the Court of Appeals-Division III's recitation of facts in its opinion under review in this case, *Neighborhood Alliance of Spokane County v. County of Spokane*, 153 Wn. App. 241, 245-54, 224 P.3d 775 (2009), a copy of which is attached hereto as *Appendix A*. It also incorporates by reference herein its statements of

fact in designated briefing filed below and with this Court.³

IV. ARGUMENT

1. There is no basis in law for denying the Alliance or any PRA plaintiff the benefit of state rules governing discovery in civil cases.

*a. The civil rules, including discovery, apply to PRA cases.*⁴

Division III applied the wrong standard in finding the Alliance's discovery overreaching. Rejecting the Alliance's argument that the state civil discovery rules govern cases under the state PRA, the court relied instead on cases construing FOIA under which discovery is severely restricted. In so ruling, the court essentially found public records cases are somehow unique and outside the normal civil rules.

This Court soundly rejected this argument five years ago in *Spokane Research & Defense Fund v. City of Spokane*.⁵ There, the City of Spokane argued and Division III agreed that PRA cases are special proceedings and plaintiffs may not utilize the normal civil procedures of summary judgment and intervention, but instead are limited to the statutory show

³Br. Pet'r 1-14, *Neighborhood Alliance*, No. 271846-III (Ct. App. Oct. 24, 2008); Petr.'s Mot. for Recons. 2-5, *Neighborhood Alliance*, No. 271846-III (Ct. App. Aug. 26, 2009); Pet. for Review 2-7, *Neighborhood Alliance*, No. -----, (Jan. 13, 2010) (No. 271846-III); Petr.'s Answer to Respt.'s Cross-Pet. for Review 2-7, No. ----- (Jan. 13, 2010) (No. 271846-III).

⁴ The Alliance incorporates by reference herein its argument on this issue in its Petition for Review, 7-13 (Jan. 13, 2010).

⁵ 155 Wn.2d 89, 103-04, 117 P.3d 1117 (2005).

cause procedures of RCW 42.17.340.⁶ Finding no statutory or legislative intent to so limit the right of public records plaintiffs, this Court reversed and confirmed the application of the civil rules and procedures to PRA cases.⁷

Just as there is nothing in the PRA that prevents the use of summary judgment and intervention, there is nothing that prevents access to normal civil discovery. If the Legislature had intended to circumscribe discovery in PRA cases, “it could easily have said so,” and “its failure to do so is an eloquent expression of intent.”⁸

b. *Division III’s narrow interpretation of discovery under the PRA is contrary to legislative intent.*

The PRA is a “strongly worded mandate for broad disclosure of public records.”⁹ Its purpose is to keep public officials and institutions accountable to the people.¹⁰ To that end, the Act must be “liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.”¹¹

Washington courts must give effect to the legislative purpose as

⁶ *Id.* at 97 (citing *Spokane Research*, 121 Wn. App. 584, 586, 89 P.3d 319 (Ct. App. 2004).

⁷ *Spokane Research*, 155 Wn.2d at 104-05.

⁸ *Grabicki v. Dept. of Ret. Sys.’s*, 81 Wn. App. 745, 755, 916 P.2d 452 (1996).

⁹ *Amren v. City of Kalama*, 131 Wn.2d 25, 31, 929 P.2d 389 (1997) quoting *Progressive Animal Welfare Soc’y v. Univ. of Wash. (PAWS)*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994).

¹⁰ *O’Connor v. State Dept. of Soc. & Health Serv’s*, 143 Wn.2d 895, 905, 25 P.3d 426 (2001).

¹¹ RCW 42.56.030.

expressed in the statute and thus construe the PRA broadly.¹² The state's civil discovery rules themselves are consistent with this legislative mandate and are to be given "broad and liberal construction."¹³ To that end, they allow for broad discovery into the subject matter of a claim with no express limit but relevancy.¹⁴

Unlike FOIA, the subject matter of a state public records action is not simply the existence or nonexistence of relevant documents and the procedures utilized to find them. Rather, because the state act provides for mandatory penalties, the "agency's decision not to release records and the grounds for that decision are precisely the subject matter of a suit brought under the Public Records Act."¹⁵ Accordingly, this Court specifically rejected the claim that "an agency's decision-making process concerning whether to release a public record is generically insulated from pretrial discovery."¹⁶ In fact, the "reasons behind agency decisions to withhold records" are so critical in public records litigation as to need no discussion.¹⁷

This Court recently provided criteria to guide courts' exercise of

¹² *Spokane Research*, 155 Wn.2d at 100.

¹³ *McGugart v. Brumback*, 77 Wn.2d 441, 444, 463 P.2d 140 (1969) (citing *Moore v. Keeseey*, 26 Wn.2d 31, 173 P.2d 130 (1946)); see also *Hickman v. Taylor*, 329 U.S. 495 (1947).

¹⁴ *Bushman v. New Holland Div. of Sperry Rand Corp.*, 83 Wn.2d 429, 435, 518 P.2d 1078 (1974).

¹⁵ *PAWS*, 125 Wn.2d at 270 n.17 (citing RCW 42.17.340).

¹⁶ *Id.*

¹⁷ *Id.*

discretion in setting PRA penalties, all of which are relevant to agency decision making and thus appropriate for discovery. These include: 1) governmental intransigence on issues of foreseeable public importance, 2) an agency's delayed response, especially where time is of the essence, 3) lack of strict compliance with all PRA requirements and exceptions, 4) unreasonableness of explanations for noncompliance, 5) negligent, reckless, wanton, bad faith, or intentional noncompliance with the PRA by the agency, 6) agency dishonesty, 7) lack of proper training and supervision of agency personnel and 8) the existence of tracking and retrieval systems.¹⁸

Discovery under the civil rules is liberal, even when cases are decided on summary judgment, not only to allow courts to decide cases on their merits, but also to ensure litigants access to information necessary to effectively pursue their claims.¹⁹ These rules expressly provide for discovery *prior* to a ruling on summary judgment.²⁰ There is simply nothing in the PRA inconsistent with the applicability of these broad rules to public records cases, including at summary judgment stage, and nothing which precludes a trial court's exercise of its discretion therein.

¹⁸ *Yousoufian v. Office of Sims*, 168 Wn.2d 444, 229 P.3d 735, 746-48 (2010).

¹⁹ *Weeks v. Chief of State Patrol*, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982); *see also Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 781-82, 819 P.2d 370 (1991) (stating that the constitutional right of access to the courts is furthered by the broad right of access to discovery, a right that is necessary to effectively pursue a claim).

²⁰ CR 56(c) (judgment shall be rendered if pleadings, depositions, answers to interrogatories, and admissions on file show no genuine issue of material fact).

c. *The Alliance's discovery was relevant to the subject matter of PRA cases and consistent with court rules.*²¹

The County answered only seven of twenty-six requests for admissions, categorically refused to respond to the Alliance's interrogatories and requests for production, and refused to allow depositions of its employees but for the court-ordered CR 31 deposition of County Building and Planning Department (BPD) Assistant Director Pam Knutsen on written questions limited to the existence of documents and the search process. CP 150-73, 190-94, 354-55; RP 22, Dec. 5, 2006. Even then, the County allowed the deponent to answer only 18 out of 53 questions. CP 422-23. Yet, the Alliance's discovery requests were relevant to the issues referenced above and within the scope of the subject matter in PRA cases.

Its requests for admissions, interrogatories, and requests for production asked questions seeking information regarding the County's procedures, policies and training in responding to PRA requests,²² the identity of persons responsible or involved in responding to this request and issues of motivation for the agency's failure to adequately respond including copies

²¹ The Alliance's written discovery - Requests for Admission, CP 150-73; Interrogatories and Requests for Production, CP 175-88; CR 31 Deposition Questions, CP 387-420; CR 31 Answers, CP 425-85; and County Objections to CR 31 Questions, CP 422-23 - are attached as *Appendix B*. The Alliance voluntarily withdrew interrogatories 13, 14, 27, 28, 29, 30, 31, and 32 and any requests for production related thereto. CP 202.

²² See Int. Nos. 2, 3.

of communications between these persons,²³ the ability of the County to identify responsive records,²⁴ the search process itself,²⁵ the existence of responsive records,²⁶ and the identity of persons with relevant information.²⁷ The CR 31 questions, as required, went to the existence of records and the process to find them.

There was nothing special in this case which separates it from other PRA cases or removes it from the reach of state civil discovery rules. As such, the Alliance's discovery requests, including its request for a CR 56(f) continuance to avoid defending summary judgment prior to hearing, were appropriate. CP 74-123, 195-216. The County's intransigence, by contrast, served no purpose other than to delay and increase the cost of litigation.

d. The County's affidavits raised genuine issues of material fact regarding issues appropriate for discovery.

Despite the County's refusal to answer most of the CR 31 questions, the Alliance agreed to proceed on the competing motions for summary judgment and to reserve a ruling on its motion to compel depending on the

²³ See Int Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 20, 25, 26.

²⁴ See Admis. Nos. 3, 4, 5, 8, 9, 10, 13, 14, 15, 16, 17, 20; CR 31 Dep. Nos. 14, 15, 16, 17, 18, 19, 21, 27-36, 42-43, 44, 45, 49-50, 51.

²⁵ See Admis. Nos. 23, 24; Int. Nos. 3, 4, 5, 6, 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 24; CR 31 Dep. Nos. 3, 4, 5, 9, 10, 12, 13, 4, 5, 6, 11, 25, 38, 39, 20, 21, 24, 27, 28, 29, 30, 31, 32, 48, 52.

²⁶ See Admis. Nos. 18, 19, 25; Interrog. Nos. 17, 19, 20, 21, 22; CR 31 Dep. Nos. 14, 15, 16, 17, 18, 19, 20, 21, 22-23, 24, 27-36, 40-41, 46, 47, 49, 50.

²⁷ See Int. Nos. 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 20, 23; CR 31 Dep. Nos. 4, 5, 6, 10, 13, 48.

trial court's decision. RP 6-9, May 13, 2008. In opposition to the County's motion for summary judgment, the Alliance argued, in part, that the evidence showed the County's search was inadequate as to both Items 1 and 2. CP 639-642, 649-651.

“The adequacy of the agency's search is judged by a standard of reasonableness, construing the facts in the light most favorable to the requestor.” An agency fulfills its obligations under the PRA if it can demonstrate beyond a material doubt that its search was “reasonably calculated to uncover all relevant documents.” Moreover, the agency must show that it “made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.”²⁸

“At summary judgment, where the burden is on the agency to show it acted in accord with the statute, the trial court may rely on affidavits submitted by an agency demonstrating the adequacy of the search.”²⁹ Agency affidavits are sufficient for summary judgment “only if they are relatively detailed in their description of the files searched and the search procedures”³⁰

²⁸ *Neighborhood Alliance*, 153 Wn. App. at 257 (citations omitted).

²⁹ *Id.* at 257-58 (citations omitted); *see also Limstrom v. Ladenburg*, 136 Wn.2d 595, 612, 963 P.2d 869 (1998), *as amended on denial of recons.* (stating that a party seeking to prevent disclosure bears burden of proof).

³⁰ *Zemansky v. U.S. EPA*, 767 F.2d 569, 573 (9th Cir. 1985).

The Alliance argued the County's affidavits as to Item 1 were not only insufficient to demonstrate an adequate search but also raised genuine issues of material fact regarding the existence of the records sought for two reasons. CP 642. First, the County admitted it made no effort to determine whether Ms. Knutsen's old PC was still intact on the date of the request. CP 610-611. Second, un rebutted affidavits by senior BPD staff showed that employees are required to copy and paste their work on network directories for storage thus raising genuine issues of material fact regarding Ms. Knutsen's CR 31 response that there was no reason to search any other computer or network other than her old PC for a copy of the electronic log of the "seating chart." CP 287-88, 332, 431.

Likewise, it argued Ms. Knutsen's affidavit as to Item 2 was insufficient to show an adequate search where it omitted the search terms used and the places searched and thereby raised genuine issues of material fact regarding the existence of responsive documents. CP 649-51. Not only did Ms. Knutsen fail to provide a reasonably detailed description of her search for these documents, the affidavit indicates she may have limited the search terms to "seating chart" and "Ron and Steve." CP 62. Ms. Knutsen was a BPD Assistant Director and the creator of the seating chart. Clearly she could have crafted search terms with her employees' full names. Moreover, it appears the term "seating chart" was used only by the

Alliance as the electronic log provided by Ms. Knutsen shows the terms used by the County were “reconfiguration” or “floor plan.” CP 60-65. And in un rebutted declarations, County staff referred to it as a “floor plan,” “reconfiguration chart,” or “cubicle layout.” CP 283-84, 330-31, 336-37. The failure to craft appropriate search terms “raise[d] a strong inference” Ms. Knutsen knew her search was inadequate.³¹

At hearing, the trial court did not reach these issues but found instead that the Alliance had had ample time for discovery and yet was still unable to provide evidence of overlooked materials. RP 33, May 13, 2008. With appropriate discovery prior to summary judgment, however, the Alliance could have probed these issues, all of which were relevant to whether the County met its burden under the PRA. Instead, the Alliance and the trial court were forced to rely almost exclusively on County affidavits, affidavits found insufficient by Division III.³²

2. Division III erred in granting summary judgment for the County based on the federal prevailing party doctrine.

Division III found the Alliance could not be a prevailing party as to

³¹ See *Yousoufian v. Office of Ron Sims*, 114 Wn. App. 836, 852-53, 60 P.3d. 667 (Ct. App. 2003), *rev'd on other grounds*, 152 Wn.2d 241, 98 P.3d 463 (2004) (agency's refusal to use adequate search terms raised a strong inference that it knew the search was inadequate); see also *Summers v. U.S. Dep't of Justice*, 934 F. supp. 458, 461 (D.D.C. 1996) (use of requestor's term “commitment” calendars rather than more common terms “diary” or “appointment” was inadequate); *Horsehead Indus., Inc. v. U.S. EPA*, 999 F. Supp. 59, 66 (D.D.C.) (agency must be careful not to read request so strictly as to deny access to records agency knows full well are in its files).

³² *Neighborhood Alliance*, 153 Wn. App. at 259 (County affidavits as to Item 1 are conclusory, insufficiently detailed and controverted by other evidence).

Item 2 because it had three emails in hand responsive to Item 2 prior to suit.³³ These emails were provided to the Alliance on November 7, 2005 in response to its additional request for computer records showing why Ms. Knutsen's PC was replaced and what happened to her old PC. CP 350-52.³⁴ In so ruling, the court relied on its prior ruling in *Daines* which in turn relied on *Coalition on Government Spying* for the proposition that PRA plaintiffs cannot prevail where they have documents in hand responsive to the request at the time of suit.³⁵ As the *COGS* court explained, "[t]o trigger the remedial provisions of the PRA, the action must be one that could 'reasonably be regarded as necessary' to obtain the records."³⁶

The *COGS* court borrowed the "prevailing party" doctrine from FOIA which allows fees and costs to a party who "substantially prevails."³⁷ Under FOIA, to substantially prevail, the plaintiff must prove his action was reasonably necessary to obtain the information and that the action had a causative effect on the release.³⁸

The prevailing party doctrine as enunciated by *COGS* and *Daines* is no

³³ *Id.* at 262.

³⁴ *Id.* at 260.

³⁵ *Daines v. Spokane County*, 111 Wn. App. 342, 347-48, 44 P.3d 909 (2002); *Coalition on Government Spying v. King County Dept. of Public Safety*, 59 Wn. App. 856, 860, 801 P.2d 1009 ("COGS") (1990).

³⁶ *Daines*, 111 Wn. App. at 347-48.

³⁷ *Spokane Research*, 155 Wn. 2d at 104 n.10.

³⁸ *Id.* citing *COGS*, 59 Wn. App. at 863 citing *Miller v. U.S. Dep't of State*, 779 F.3d 1378, 1389 (8th Cir. 1985).

longer the law in this state. As this Court explained in *Spokane Research*, while the “COGS court adopted this standard for the PDA, we never have, and decline to do so. Our statute says nothing about ‘substantially prevailing’ and differs from the federal scheme at several important points, notably fees and penalties.”³⁹ Rather, “‘prevailing’ [under the state act] relates to the legal question of whether the records should have been disclosed on request.”⁴⁰ “[N]owhere in the PDA is prevailing party status conditioned on causing disclosure.”⁴¹ Moreover, “[s]ubsequent events do not affect the wrongfulness of the agency's initial action to withhold the records if the records were wrongfully withheld at that time. Penalties may be properly assessed for the time between the request and the disclosure, even if the disclosure occurs for reasons unrelated to the lawsuit.”⁴²

Although it is true that in *Spokane Research*, the documents sought were disclosed after the plaintiff filed suit, albeit for unrelated reasons, while here the documents were disclosed prior to suit, this is a distinction without merit.⁴³ Untimely release is itself a violation of the PRA.⁴⁴ As such, this Court made clear “the harm occurs when the record is

³⁹ *Spokane Research*, 155 Wn. 2d at 104 n.10 (citation omitted).

⁴⁰ *Id.* at 103.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 103.

⁴⁴ RCW 42.17.320. See also RCW 42.17.290 (agency to provide fullest assistance and most timely possible action); *Yousoufian*, 229 P.3d at 748 (aggravating factor increasing penalties includes lack of strict compliance with all PRA requirements).

withheld.”⁴⁵ Moreover, untimely release and the underlying reasons therefore are appropriate bases for penalties.⁴⁶ To hold that litigants cannot sue where an agency fails to release documents in a prompt manner would allow agencies to violate the PRA with impunity by simply withholding until a plaintiff threatens suit or until release is no longer timely - perhaps after an election or passage of controversial legislation – exactly the behavior the Court’s ruling in *Spokane Research* sought to address.

While the County apparently wants this Court to readdress its decision in *Spokane Research*, doing so would be counter to the express statutory language and an unjustified narrowing of the law. The PRA mandates full disclosure of public records in a timely manner.⁴⁷ By withholding these e-mails from June 6, 2005 through November 7, 2005, the County violated the PRA.

3. The County’s search for Item 1 was inadequate where it searched the only place the record could not be found.

Under the PRA, agencies must provide “the fullest assistance to inquirers and the most timely possible action on requests for information.”

⁴⁵ *Spokane Research*, 155 Wn. 2d at 104, n.10.

⁴⁶ *Yousoufian*, 229 P.3d 748.

⁴⁷ *Spokane Research*, 155 Wn.2d at 102-03, 117 P.3d 1117; *Amren*, 131 Wash.2d at 31, 929 P.2d 389

⁴⁸ An agency does not do so if it fails to perform a reasonable search and Division III appropriately found the County failed to do so as to Item I.

The Alliance requested the complete electronic log showing the date of creation of the document, not the date the documents were transferred to Ms. Knutsen's PC. Thus, the only place the documents requested could *not be* found was in Ms. Knutsen's new PC. Yet this was the *only* place Ms. Knutsen searched. Moreover, the County admitted it had no evidence Ms. Knutsen's PC was not still intact prior to August when it was rebuilt.

The County had ample opportunity to provide evidence by affidavit of a County policy requiring a hard drive wipe at the time a PC is replaced. It did not. Rather, the evidence shows the standard practice was simply to wipe hard drives prior to rebuild or sale. CP 58. The County's own records confirm this PC was not rebuilt until August, almost three months after the request. CP 494, 602-607.

A search of an idle PC is hardly a search through the trash bin or a place where documents are not usually found. Electronic documents *are* usually stored in computers even when in storage awaiting a new assignment, unless the record has been deleted or the hard drive wiped. Under these facts, a search reasonably calculated to find the complete electronic log would have included Ms. Knutsen's old PC. Moreover,

⁴⁸ *Spokane Research & Defense Fund v. West Cent. Cmty. Dev. Ass'n*, 133 Wn. App. 602, 606, 137 P.3d 120 (2006)(quoting former RCW 42.17.290) (1995).

such a search was hardly burdensome. All Ms. Knutsen had to do was simply ask the Information System's Department whether her computer had already been wiped in preparation for another use. If not, the record would still have been on the hard drive and could have been provided to the Alliance. If so, Ms. Knutson could have explained as much in her response and, to the extent no electronic copies existed on another network or backup system, the County would have fulfilled its duty under the PRA as to this record with no liability.

Further, the County arguably had a duty to do so. Under the PRA, if a "request is made at a time when such record exists but is scheduled for destruction, the agency . . . may not destroy or erase the record until the request is resolved."⁴⁹ Ms. Knutsen's computer was replaced on April 27, 2005, just weeks before the May 16 request. The County knew the records were slated for destruction at some point in the future. In the absence of a County policy erasing all records at the time a PC is replaced, the County had a duty to inquire into the status of the record and thus the ability to show the existence or nonexistence of these records.

4. An inadequate search is a denial of access under the PRA triggering mandatory penalty assessment.

Agencies cannot evade disclosure and consequent penalties by failing to conduct a good faith search. The proposition that penalties are based on

⁴⁹ RCW 42.17.290.

the days a plaintiff is denied access derives from the plain meaning of the PRA which provides for penalties for “each day” the plaintiff “was denied the right to inspect or copy said public record.”⁵⁰ The County appears to argue that agencies should not be subject to this provision where an agency fails to conduct an adequate search and is thus unable to demonstrate the nonexistence of responsive records at the time of request. Such a reading is contrary to this Court’s prior holdings and contrary to legislative intent.

In *Soter*, this Court clarified that the penalty provision does not grant trial courts discretion to spare agencies per diem penalties based on agency actions to reduce exposure.⁵¹ Rather, this Court held that “if an agency has improperly denied a requester access to a public record, per diem penalties apply for every day that access was denied.”⁵²

The PRA’s penalty provision is intended to “discourage improper denial of access to public records and [encourage] adherence to the goals and procedures dictated by the statute.”⁵³ “A penalty is specifically designed to insure performance of statutory duties and can be imposed

⁵⁰ RCW 42.17.340(4).

⁵¹ *Soter v. Cowles Pub. Co.*, 162 Wn. 2d 716, 756, 174 P.3d 60 (2007).

⁵² *Id.* at 758 citing *Koenig v. City of Des Moines*, 158 Wn.2d 173, 189, 142 P.3d 162 (2006)(trial court required to impose penalty within statutory range for each day records withheld).

⁵³ *Hearst Corp. v. Hoppe*, 90 Wn. 2d 123, 140, 580 P.2d 246 (1978).

whenever a violation of duty has occurred.”⁵⁴ Thus, the purposes of the PRA are best served by “increasing the penalty based on an agency’s culpability”⁵⁵ and not by reducing the daily compilation.

Under *Sotor*, trial courts may not reduce the daily compilation based on positive actions taken by an agency to curb the accumulation of daily penalties. It makes no sense then to hold courts may do so when an agency takes actions rendering disclosure impossible. Such a reading would encourage inadequate searches or the destruction of “inconvenient” records as soon as possible after request thereby evading or limiting liability.

In *Yacobellis*, the trial court faced a similar situation.⁵⁶ There, the City denied the plaintiff access to golf surveys and subsequently destroyed the records. On appeal, the court determined the records should have been disclosed and remanded for a determination of statutory penalties. *Id.* at 297. On remand, the trial court determined the applicable time period for computation of the statutory award ran from the date of the request through the date the Supreme Court denied review of the matter.⁵⁷ Although neither party challenged the trial court’s daily computation, the

⁵⁴ *Yacobellis v. City of Bellingham*, 64 Wn. App. 295, 301, 825 P.2d 324 (1992), abrogated on other grounds by *Amren v. City of Kalama*, 131 Wn. 2d 25, 929 P.2d 389 (1997).

⁵⁵ *Yousoufian v. Office of Sims*, 152 Wn. 2d 421, 435, 98 P.3d 463 (2005).

⁵⁶ *Yacobellis*, 64 Wn. App. at 297-98.

⁵⁷ *Id.* at 299.

award comported with the letter and spirit of the PRA to discourage agency noncompliance.

In a more recent case, Division I remanded for a computation of penalties based on a city's failure to disclose metadata.⁵⁸ However, because the city failed to conduct a thorough search, it was unclear from the record whether the metadata still existed. If so, it was to be provided. If not, the trial court was ordered to determine whether the deletion violated the PRA. Either way, the court ordered penalty determinations.⁵⁹

This case is similar. It was the County's wrongful failure to conduct a reasonable search which denied access. Upon remand, appropriate discovery should reveal the County's level of culpability in destroying records responsive to a pending request.⁶⁰ Such facts are appropriate for penalty considerations but not through a reduction in the daily computation. The PRA has been construed to address these issues by an adjustment of the per diem penalty amount, not a reduction in the compilation of penalty days. Such a construction comports with existing case law and legislative intent to promote disclosure and discourage improper denial of access.

⁵⁸ *O'Neill v. City of Shoreline*, 145 Wn. App. 913, 936, 187 P.3d 822 (2008).

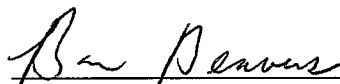
⁵⁹ *Id.*

⁶⁰ Had the document been destroyed prior to request, the County's refusal to engage in discovery becomes somewhat puzzling.

IV. CONCLUSION AND REQUEST FOR RELIEF

Division III's ruling unjustifiably undermines the public interest by narrowing public records plaintiffs' right to access information necessary to pursue their claims and narrowing their right to recovery. For this reason, the Alliance requests this Court to expressly hold that PRA plaintiffs have a right to full discovery under state rules and to reaffirm its holding rejecting the *COGS* version of the prevailing party doctrine. It also requests this Court to (1) affirm Division III as to the finding of liability on Item 1; (2) grant summary judgment to the Alliance as to Item 2, (3) remand with an order for an award of attorney's fees, costs and penalties pursuant to former RCW 42.17.340 with an order for discovery under the *Yousoufian* framework, and (4) enter an order granting the Alliance reasonable attorneys fees and expenses on appeal as allowed by RAP 18.1.

Respectfully submitted this 30th day of June, 2010.



Bonne Beavers, WSBA #32765

Breean Beggs, WSBA #20795

Center for Justice

Attorney for Petitioner Neighborhood Alliance

CERTIFICATE OF SERVICE

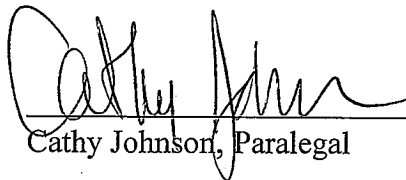
I hereby certify that I served the foregoing Petitioner's Supplemental Brief by the following indicated method or methods:

☒ by **hand-delivering** a full, true, and correct copy thereof to the person shown below:

PAT RISKEN
EVANS, CRAVEN & LACKIE
LINCOLN BUILDING #250
818 W. RIVERSIDE AVENUE
SPOKANE, WA 99201

☒ by sending a full, true and correct original and one copy via Fed Ex Priority Overnight addressed to the Supreme Court Temple of Justice, 415 12th Avenue SW, Olympia, WA 98504.

DATED this 15 day of July, 2010.


Cathy Johnson, Paralegal

APPENDIX A

H

Court of Appeals of Washington,
 Division 3.
 NEIGHBORHOOD ALLIANCE OF SPOKANE
 COUNTY, a non-profit corporation, Appellant,
 v.
 COUNTY OF SPOKANE, a political subdivision of
 the State of Washington, Respondent.
 No. 27184-6-III.

Aug. 11, 2009.

Background: Nonprofit organization interested in government accountability in land use planning brought action against county, alleging county's failure to disclose records requested under public records act (PRA), which request related to organization's investigation of putative whistleblower's allegation that county's building and planning department had illegally selected two people to fill positions as development assistant coordinators before the openings for those positions were posted. The Superior Court, Lincoln County, Philip W. Borst, J., denied organization's motion to compel discovery and granted summary judgment to county. Organization appealed.

Holdings: The Court of Appeals, Kulik, A.C.J., held that:

- (1) county failed to conduct a reasonably adequate search for a complete electronic information log showing date of creation of department's seating chart which apparently showed cubicle assignments for the hired development assistant coordinators before their positions were posted;
- (2) county did not violate public records act by failing to re-disclose information regarding last names of three employees whose cubicle assignments were shown on seating chart; and
- (3) organization's request for discovery in the action under the public records act went far beyond the issue of whether a reasonably adequate search for documents had taken place.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Judgment 228 ⚡181(2)228 Judgment228V On Motion or Summary Proceeding228k181 Grounds for Summary Judgment228k181(2) k. Absence of issue of fact.Most Cited Cases

A "material fact," for purposes of summary judgment, is one that affects the outcome of the litigation. CR 56(c).

[2] Records 326 ⚡50326 Records326II Public Access326II(B) General Statutory Disclosure Requirements

326k50 k. In general; freedom of information laws in general. Most Cited Cases

The public records act (PRA) is a strongly worded mandate for broad disclosure of public records. West's RCWA 42.56.001 et seq.

[3] Records 326 ⚡50326 Records326II Public Access326II(B) General Statutory Disclosure Requirements

326k50 k. In general; freedom of information laws in general. Most Cited Cases

Records 326 ⚡54326 Records326II Public Access326II(B) General Statutory Disclosure Requirements

326k53 Matters Subject to Disclosure; Exemptions

326k54 k. In general. Most Cited Cases
 Courts must liberally construe the public records act's (PRA's) disclosure provisions to promote full access to public records and narrowly construe its exemptions. West's RCWA 42.56.030.

[4] Courts 106 ⚡97(5)

106 Courts

106II Establishment, Organization, and Procedure

106II(G) Rules of Decision

106k88 Previous Decisions as Controlling or as Precedents

106k97 Decisions of United States Courts as Authority in State Courts

106k97(5) k. Construction of federal Constitution, statutes, and treaties. Most Cited Cases
Washington State's public records act (PRA) closely parallels the federal Freedom of Information Act (FOIA), and thus, where appropriate, Washington State courts look to judicial interpretations of FOIA in construing the PRA. 5 U.S.C.A. § 552; West's RCWA 42.56.001 et seq.

[5] Records 326 ⚡62

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k61 Proceedings for Disclosure

326k62 k. In general; request and compliance. Most Cited Cases

For purposes of the public records act (PRA), the adequacy of the agency's search for requested records is judged by a standard of reasonableness, construing the facts in the light most favorable to the requestor. West's RCWA 42.56.100.

[6] Records 326 ⚡62

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k61 Proceedings for Disclosure

326k62 k. In general; request and compliance. Most Cited Cases

An agency fulfills its obligations under the public records act (PRA) if it can demonstrate beyond a material doubt that its search for requested records was reasonably calculated to uncover all relevant documents. West's RCWA 42.56.100.

[7] Records 326 ⚡62

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k61 Proceedings for Disclosure

326k62 k. In general; request and compliance. Most Cited Cases

For purposes of the public records act (PRA), an agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested. West's RCWA 42.56.100.

[8] Records 326 ⚡62

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k61 Proceedings for Disclosure

326k62 k. In general; request and compliance. Most Cited Cases

For purposes of the public records act (PRA), the adequacy of an agency's search for requested documents is separate from the question of whether the requested documents are found, and the issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate, with adequacy judged by a standard of reasonableness and depending upon the particular facts of each case. West's RCWA 42.56.100.

[9] Judgment 228 ⚡185.3(1)

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185.3 Evidence and Affidavits in Particular Cases

228k185.3(1) k. In general. Most Cited Cases

At the summary judgment stage of an action under the public records act (PRA), at which the agency has the burden to show that it acted in accordance with the statute, the trial court may rely on affidavits submitted by the agency demonstrating the adequacy of the search for requested records. West's RCWA 42.56.100.

[10] Judgment 228 ⚡185.1(4)

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185.1 Affidavits, Form, Requisites and Execution of

228k185.1(4) k. Matters of fact or conclusions. Most Cited Cases

Judgment 228 ☞ 185.3(1)

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185.3 Evidence and Affidavits in Particular Cases

228k185.3(1) k. In general. Most Cited Cases

In actions under the public records act (PRA), affidavits describing agency search procedures are sufficient for summary judgment purposes only if they are relatively detailed, nonconclusory, and not impugned by evidence in the record of bad faith on the part of the agency, and such affidavits must set forth the search terms and the type of search performed, and must aver that all files likely to contain responsive materials, if such records exist, were searched. West's RCWA 42.56.100.

[11] Judgment 228 ☞ 185.3(1)

228 Judgment

228V On Motion or Summary Proceeding

228k182 Motion or Other Application

228k185.3 Evidence and Affidavits in Particular Cases

228k185.3(1) k. In general. Most Cited Cases

In an action under the public records act (PRA), if a review of the record raises substantial doubt, particularly where the requests for documents are well defined and there are positive indications of overlooked materials, summary judgment in favor of the agency is inappropriate, with respect to the adequacy of the agency's search for requested documents. West's RCWA 42.56.100.

[12] Records 326 ☞ 62

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k61 Proceedings for Disclosure

326k62 k. In general; request and compliance. Most Cited Cases

County failed to conduct a reasonably adequate search, as required under public records act (PRA), with respect to request by nonprofit organization interested in government accountability in land use planning, which organization was investigating putative whistleblower's allegation that county's building and planning department had illegally selected two people to fill positions as development assistant coordinators before the openings for those positions were posted, for a complete electronic information log showing date of creation of department's seating chart which apparently showed cubicle assignments for the hired development assistant coordinators before their positions were posted; while county believed that a complete information log could not be recovered from hard drive of former personal computer of department employee from whose computer the seating chart had originated because, if county's standard practices had been followed, all data would have been wiped from that hard drive before the computer was reassigned to another employee, county did not search that computer and county admitted that it was not certain that the data wipe had occurred or, if it had occurred, when it had occurred. West's RCWA 42.56.100.

[13] Records 326 ☞ 62

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k61 Proceedings for Disclosure

326k62 k. In general; request and compliance. Most Cited Cases

For purposes of the public records act (PRA), if an agency has reason to know that certain places may contain responsive documents, it is obligated to search barring an undue burden. West's RCWA 42.56.100.

[14] Records 326 ☞ 62

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k61 Proceedings for Disclosure

326k62 k. In general; request and compliance. Most Cited Cases

County did not violate public records act (PRA), with respect to request by nonprofit organization interested in government accountability in land use planning, which organization was investigating putative whistleblower's allegation that county's building and planning department had illegally selected two people to fill positions as development assistant coordinators before the openings for those positions were posted, by failing to disclose documents showing the last names of two employees whose first names, which were shown on seating chart showing cubicle assignments for department employees, which chart was allegedly prepared before the position openings were posted, matched first names of the hired development assistant coordinators, where the last names were contained in documents previously disclosed the organization. West's RCWA 42.56.001 et seq.

[15] Appeal and Error 30 ↪961

30 Appeal and Error

30XVI Review

30XVI(H) Discretion of Lower Court

30k961 k. Depositions, affidavits, or discovery. Most Cited Cases

A trial court's decision denying a motion to compel discovery is reviewed for an abuse of discretion, to determine whether the trial court's decision was manifestly unreasonable or based on untenable grounds or reasons. CR 37.

[16] Pretrial Procedure 307A ↪19

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak19 k. Discretion of court. Most Cited Cases

Pretrial Procedure 307A ↪21

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak21 k. Actions and proceedings in

which remedy is available. Most Cited Cases

In general, discovery is not part of a federal Freedom of Information Act (FOIA) case, and the decision whether to allow discovery rests within the discretion of the trial court. 5 U.S.C.A. § 552.

[17] Pretrial Procedure 307A ↪20

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak20 k. Liberality in allowance of remedy. Most Cited Cases

When discovery is permitted in a federal Freedom of Information Act (FOIA) case, it is to be sparingly granted. 5 U.S.C.A. § 552.

[18] Pretrial Procedure 307A ↪27.1

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak27 Scope of Discovery

307Ak27.1 k. In general. Most Cited Cases

In an action under the federal Freedom of Information Act (FOIA), the scope of discovery is limited to whether complete disclosure has been made by the agency in response to a request for information, and whether a thorough search for documents has taken place and whether withheld items are exempt from disclosure are permissible avenues for discovery. 5 U.S.C.A. § 552.

[19] Pretrial Procedure 307A ↪378

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(E) Production of Documents and Things and Entry on Land

307AII(E)3 Particular Documents or Things

307Ak378 k. Employment records. Most Cited Cases

Pretrial Procedure 307A ↪380

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(E) Production of Documents and

Things and Entry on Land

307AII(E)3 Particular Documents or

Things

307Ak380 k. Government records and papers. Most Cited Cases

In action by nonprofit organization interested in government accountability in land use planning against county, alleging county's failure to disclose records requested under public records act (PRA), which request related to organization's investigation of putative whistleblower's allegation that county's building and planning department had illegally selected two people to fill positions as development assistant coordinators before the openings for those positions were posted, organization was not entitled to discovery of records regarding county's hiring practices and job postings, information about county meetings in which participants discussed withholding records, information regarding identity of those who made hiring decisions, and information regarding experience and qualifications of those who had applied for the open positions for development assistance coordinators; requested discovery went far beyond the issue of whether a reasonably adequate search for documents had taken place. West's RCWA 42.56.001 et seq.

[20] Pretrial Procedure 307A 380

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(E) Production of Documents and Things and Entry on Land

307AII(E)3 Particular Documents or Things

307Ak380 k. Government records and papers. Most Cited Cases

Discovery which seeks information concerning the policies, procedures, and operational guidelines for an agency's operations far exceeds the limited scope of discovery usually allowed in a federal Freedom of Information Act (FOIA) case concerning factual disputes surrounding the adequacy of the search for documents. 5 U.S.C.A. § 552.

****777** Breean L. Beggs, Center for Justice, Bonne W. Beavers, Spokane, WA, for Appellant.

Patrick Mark Risken, Attorney at Law, Spokane, WA, for Respondent.

KULIK, A.C.J.

***245 ¶ 1** The Neighborhood Alliance of Spokane County (Alliance) brought an action against Spokane County (County) for its alleged failure to disclose records requested under Washington's public records act (PRA), ^{FN1} former chapter 42.17 RCW. Both parties moved for summary ***246** judgment. The court granted summary judgment to the County.

^{FN1}. Effective July 1, 2006, the public records act (PRA), formerly a part of the public disclosure act (PDA), was recodified at chapter 42.56 RCW. LAWS OF 2005, ch. 274, § 103. This case arose in May 2005, prior to recodification and, therefore, citations will be to the code as it existed at that time.

¶ 2 We hold that the County failed to adequately search its records when it did not examine the original computer where the requested record was created. Thus, we reverse ****778** summary judgment for the County on this issue. However, we affirm the summary judgment in favor of the County on its response to the Alliance's request for records relating to names on the seating chart because the Alliance had received these records under a separate request. Finally, we affirm the trial court's denial of the Alliance's motion to compel.

FACTS

¶ 3 The Alliance is a nonprofit, community-based organization that emphasizes "government accountability, especially in land use and planning issues." Clerk's Papers (CP) at 91.

¶ 4 The Alliance received a letter from what appeared to be an anonymous whistleblower complaining about potential illegal hiring practices in Spokane County's Building and Planning Department (BPD). The letter included a copy of an undated seating chart, allegedly depicting office space for staff in the BPD. The chart, which appears as a map or floor plan of the first floor of the BPD, depicts the location of cubicles and identifies the seating arrangement for approximately 18 current or prospective employees within those cubicles. The seating chart listed only employees' first names, including two in one cubicle, "Ron & Steve." CP at 88. The name "Steve" was also listed on the seating chart in a separate cubicle with

what appeared to be a telephone extension number of "7221." CP at 88.

¶ 5 The letter stated that the chart was found in the printer at the BPD on February 16, 2005. Numerous copies were circulated to BPD employees on or about February 16. The chart originated from Pam Knutsen's computer. Ms. Knutsen is the assistant director of building and planning *247 for Spokane County. The letter claimed that the positions occupied by Ron and Steve on the seating chart had not yet been posted for hiring as required by the County's personnel rules.

¶ 6 The Alliance took a strong interest in the allegations when the names Ron and Steve on the February seating chart matched the first names of the department employees hired several weeks later—Ron Hand and Steve Harris. This led the Alliance to believe the County may have engaged in illegal hiring practices.

¶ 7 In early March 2005, Spokane County posted notice of two openings for the position of development assistant coordinator. In mid-March, Spokane County hired Steve Harris as development assistance coordinator 1 to work with Ron Hand, who had also been recently hired as development assistance coordinator 2. Steve Harris is the son of then-Commissioner Phil Harris, and the third son of Phil Harris to be hired by Spokane County.

¶ 8 Bonnie Mager, then executive director of the Alliance, filed public records requests for documents that would substantiate the date of the seating chart and the full names of the employees listed on the chart.

¶ 9 On May 3, 2005, Ms. Mager, on behalf of the Alliance, sent a public records request to the County, asking to review all records created in January 2005, February 2005, and March 2005 "that display either current or proposed office space assignments for County Building and Planning Department officials and employees." CP at 277. On May 11, the County provided Ms. Mager with three "proposed seating assignment charts." CP at 277. The first seating chart was undated. That chart appeared identical to the seating chart provided to the Alliance in February, and included the names Ron and Steve as well as Steve 7221. The other two versions of the chart were dated February 22, 2005, and April 18, 2005. The

February 22, 2005 chart no longer had the names Ron and Steve in a cubicle but, instead, simply had the word "New" in two other cubicles. CP at 279.

*248 ¶ 10 Then, on May 16, 2005, the Alliance sent a second public records request to the County, addressed to the human resources director for Spokane County, Cathy Malzahn. The request asked for information regarding electronic file information logs for the undated BPD seating chart and records pertaining to the identities of Ron and Steve on the seating chart. The Alliance requested:

1) The complete electronic file information logs for the undated county planning division**779 seating chart provided by Ms. Knutsen to the Neighborhood Alliance on May 13th. This information should include, but not necessarily be limited to, the information in the "date created" data field for the document as it exists on the specific Microsoft Publisher electronic document file created for the referenced seating chart. The requested information should also include, but not be limited to, the computer operating system(s) data record indicating the date of creation and dates of modification for the referenced seating chart document.

2) The identities of "Ron & Steve" individuals who are situated near the center of the seating chart referenced in item # 1. Also, the identity of the individual listed as "Steve" in the cubicle with the number 7221 at the top of the chart.^[FN2]

FN2. We refer to these requests as Item 1 and Item 2.

By the term public records, I am invoking a broad definition, consistent with [former] RCW 42.17.020(36) [(2002)] and specifically mean to include records that exist in any electronic form as well as those that exist on paper. This should be read to include, but not be limited to, records preserved in paper correspondence, electronic mail, facsimiles, videotape, and computer files.

Pursuant to [former] RCW 42.17.310 [(2003)], please identify any record covered by the above requests that is being withheld as exempt, and provide a summary of the record's content and the specific reason for the exemption.

CP at 51-52.

¶ 11 The County responded by letter dated May 23, 2005, stating that the County would complete its response process by June 6, 2005.

*249 ¶ 12 The County responded to the Alliance's May 16, 2005 public records request by letter dated June 6, 2005. Addressing the first paragraph of the Alliance's request, referred to by the parties as Item 1, the County's letter stated "[c]onsistent with your Public Disclosure Request, enclosed you will find a copy of the 'date created' data file[s] as requested." CP at 54. The County attached a single document-an electronic file information log. The log contained the name, location, date created, date modified, and date accessed information for the seating chart and several other documents.

¶ 13 The log showed that the date created for each document listed was either April 26 or April 27, 2005. However, the date created field listed on the information log showed that each of the documents, including the seating chart, were created after the date modified. The seating chart showed a date last modified of February 22, 2005. No other information was provided in the County's June 6 response regarding the discrepancies between the dates of creation for the listed documents, nor was there any explanation of the search that was used to identify these documents.

¶ 14 The County did not provide any records in response to Item 2-the identities of Ron and Steve-of the Alliance's May 16, 2005 public records request. The County's letter stated that the statutory disclosure statement "does not require agencies to explain public records. As such, no response is required with respect to item number 2 referenced above." CP at 54.

¶ 15 Nevertheless, with regard to Item 2, Ms. Knutsen later stated in a declaration that her "search for documents which might reference the identities of 'Ron and Steve' and 'Steve' turned up nothing. Stated another way, there are no documents which reference the seating chart and identify the full names of 'Ron and Steve' or 'Steve' therein." CP at 62.

¶ 16 The director of the information systems department (ISD) for Spokane County, Bill Fiedler, later explained the *250 discrepancy in the electronic log file dates by stating that Ms. Knutsen's personal computer was replaced in April 2005 as part of routine maintenance. During that process, all documents that were on the hard drive of her old computer were transferred to her new computer. Mr. Fiedler explained that when that copying takes place, all documents are given a new date created. After all the documents were copied, the new computer was then delivered to Ms. Knutsen.

**780 ¶ 17 Mr. Fiedler further stated that the ISD then takes the old computer and hard drive back to its office where it wipes all data off the old hard drive. According to Mr. Fiedler, data stored on local computer hard drives, including Ms. Knutsen's, are not backed up through the County network. "Therefore, the only information contained in that particular computer's Hard Drive would be found on its hard drive." CP at 58. Mr. Fiedler did not state that Ms. Knutsen's old computer, from which the seating chart had originated, had been searched.

¶ 18 The Alliance subsequently obtained the declaration of Bruce Hunt, a senior planner at the BPD, who stated that it was routine policy for staff to copy and paste all County work from staff C drives on their individual computers to network drives for backup and storage. Thereafter, the Alliance believed that if the information was stored on a server rather than on an individual computer, the County could have provided the actual date the seating chart file was created by accessing a backup file.

¶ 19 On October 7, 2005, counsel for the Alliance wrote a letter to the Spokane County Deputy Prosecutor Jim Emacio seeking compliance with the May 16, 2005 public records request. In that letter, the Alliance attempted to clarify its May 16, 2005 request, particularly Item 2, the identities of Ron and Steve. The letter states:

[I]n an effort to confirm that Steve Harris was the "Steve" listed on the February 16, 2005 seating chart, the letter asked the County for any *documents identifying or clarifying* the identities of "Ron" and "Steve."

*251

In essence, the request asked for any document that would have had the full name of the "Steve" listed on the seating chart in the same office space as "Ron." My client believes that person is Steve Harris, but wants to confirm this belief with the County's own documents-that Steve Harris is, indeed, the person listed in the February 16 seating chart. The request did not ask for the identity of "Steve," only for the County documents with his name on them.

CP at 68-69 (emphasis added).

¶ 20 That was followed by a letter from the Alliance to Mr. Emacio, dated October 31, 2005, which added new requests regarding Item 1 of the May 16, 2005 records request and the maintenance of Ms. Knutsen's computer. The County responded timely and the Alliance has not challenged these responses to the additional requests in the October 31, 2005 letter.

¶ 21 At some point, Ms. Knutsen's old computer had its hard drive wiped, and in August 2005 it was given to Spokane County employee Gloria Wendel. By letter dated November 28, 2005, the Alliance made another public records request for the "email or memo requesting that Ms. Wendel receive Ms. Knutsen's computer and the documentation showing when Ms. Knutsen's computer was wiped of data." CP at 595. The County responded on December 5, 2005, by providing records regarding computer work done for Ms. Wendel in August 2005.

¶ 22 *Procedural History.* The Alliance filed suit against Spokane County on May 1, 2006, claiming that the County violated the public records act by failing to provide the requested records. Approximately one month later, the Alliance commenced discovery by serving on the County one set of requests for admission and one set of interrogatories and requests for production. The discovery explores not only the May 16, 2005 request, but also the additional requests made on October 31, 2005.

¶ 23 On May 24, 2006, attorney Patrick Riskin of Evans, Craven & Lackie, filed a notice of appearance on behalf of *252 the County. The County then filed timely objections to all of the requests for admission and provided limited answers to 6 of 26 requests. The County did not answer the Alliance's interrogatories

and requests for production; rather, in November, it moved for summary judgment and, in December 2006, it moved for a protective order.

¶ 24 From August through November 2006, the Alliance attempted to arrange depositions of county employees, particularly **781 Ms. Knutsen, and to receive answers to its written discovery. The County agreed to submit answers to written discovery by September and schedule a deposition of Ms. Knutsen by mid-October 2006. On October 30, 2006, the County agreed that Ms. Knutsen's deposition would be scheduled in December.

¶ 25 However, on November 16, 2006, the County moved for summary judgment. In support of its motion, the County filed affidavits by Ms. Malzahn, Ms. Knutsen, and Mr. Fiedler. The County argued that the Alliance was provided exactly what it asked for in Item 1 of its May 16, 2005 request, and that it was not required to interpret the seating chart already in the Alliance's possession, in response to Item 2. The County argued that its response to the Alliance's "very limited request for public records" was handled appropriately and in accordance with the public disclosure act. CP at 43. The County argued that unless the Alliance could demonstrate that the County did, in fact, possess further nonexempt records which were encompassed by the May 16, 2005 request for public records and had wrongfully withheld them, the Alliance's case must be dismissed.

¶ 26 Shortly thereafter, in order to avoid defending against summary judgment without discovery, the Alliance asked the County for a brief continuance until discovery could be completed. The County rejected the request and informed the Alliance that it would refuse to provide any discovery answers in writing or by deposition.

¶ 27 On November 30, 2006, the Alliance filed a motion to compel discovery and continue summary judgment. In its motion, the Alliance sought an order under CR 37 compelling*253 the deposition of Ms. Knutsen, responses to written discovery, and a continuance of the County's summary judgment motion under CR 56(f) until full discovery was provided. The County moved for a protective order.

¶ 28 In support of its motion to compel, the Alliance attached the declaration of attorney Breean Briggs,

which included pages from two internal Spokane County telephone directories that list Steve Davenport at telephone extension 7221, the same number listed next to his name on the February seating chart, as well as Ron Hand. The Alliance argued that these documents would have been responsive to its records request because they contained the identities of Ron and Steve at 7221. The Alliance pointed out that the County refused to provide these and other similar records, including documents that recorded the identity of the other person named Steve from the seating chart.

¶ 29 On December 5, 2006, the court heard the Alliance's motions to compel and to continue the summary judgment hearing. Prior to, and during the hearing, the Alliance offered to narrow initial discovery, including depositions, to the core issues of liability—namely, whether documents existed at the time the request was made and the search processes—and to delay discovery on issues related to penalties until after summary judgment on liability. In its oral ruling, the trial court ordered the deposition of Ms. Knutsen by written questions under CR 31. The trial court narrowed the scope of the questions to the following two issues: whether documents existed that were responsive to the May 16, 2005 records request, and the process used to find them. The court continued the summary judgment hearing and the motion to compel.

¶ 30 The written deposition of Ms. Knutsen was finally taken on October 12, 2007, and Ms. Knutsen answered 18 out of 53 questions. Four months later, the County provided answers to five more written questions. The County admitted that it did not know the date Ms. Knutsen's hard drive on her old computer was wiped and that there was no *254 record that it was wiped prior to the May 16, 2005 request for records from that computer's hard drive. The County's response indicates that it had made no efforts to confirm whether Ms. Knutsen's old computer retained any record of the seating chart. In its answers to remaining deposition questions, the County responded as follows:

QUESTION 9. Please identify the date that the data on Pam Knutsen's "old PC" was wiped off its hard drive as described **782 in the Affidavit of Bill Fiedler at paragraph 6 (Exhibit 3).

ANSWER: Unknown.

QUESTION 10. Please identify the person who performed the data wipe as described in the previous question.

ANSWER: To the best of our knowledge, Angela Kane. However, it could have been John Schlosser. There is no record of who did that work or when precisely it was done.

....

QUESTION 12. Please describe any and all efforts made by County employees to confirm whether or not Pam Knutsen's old "PC" retained any record of the seating chart at Exhibit 1 to this deposition.

ANSWER: There are no efforts in that regard, on this or any other computer. Once a PC is "wiped" there is no reason to check to see if that process was completed or successful.

CP at 610-11.

¶ 31 On April 4 and May 6, 2008, the Alliance filed a cross-motion for summary judgment and a response, supported by affidavits from the County's BPD. The County asked the trial court to strike these declarations as irrelevant and speculative.

¶ 32 At the hearing on May 13, 2008, the parties agreed to argue their respective summary judgment motions first and reach discovery issues as necessary. Finding there had been ample time for discovery, the trial court denied the Alliance's motion to compel discovery and granted summary judgment to the County. This appeal followed.

*255 ANALYSIS

[1] ¶ 33 A. *Standard of Review.* We review a trial court's grant of summary judgment de novo, engaging in the same inquiry as the trial court. Lybbert v. Grant County, 141 Wash.2d 29, 34, 1 P.3d 1124 (2000). Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). "A material fact is one that affects the outcome of the litigation." Owen v. Burlington N. Santa Fe R.R., 153

Wash.2d 780, 789, 108 P.3d 1220 (2005). When considering a summary judgment motion, the court must construe all facts and reasonable inferences in the light most favorable to the nonmoving party. Lybbert, 141 Wash.2d at 34, 1 P.3d 1124. Factual issues may be decided as a matter of law only if reasonable minds could reach but one conclusion. Sherman v. State, 128 Wash.2d 164, 184, 905 P.2d 355 (1995).

¶ 34 The first issue on appeal concerns whether the trial court erroneously granted the County's motion for summary judgment. The Alliance contends that it was entitled to summary judgment because the County violated the PRA by failing to conduct a reasonable search for the documents requested. The County contends that the Alliance failed to present admissible, credible evidence beyond "wild speculation and conspiracy theories" demonstrating that the County violated the PRA when it responded to the Alliance's May 16, 2005 public records request. Br. of Resp't at 19.

[2][3] ¶ 35 B. *Public Records Act*. The public records provisions of the public disclosure act were enacted in 1972 by initiative, formerly chapter 42.17 RCW, now codified at chapter 42.56 RCW. The PRA is a "strongly worded mandate for broad disclosure of public records." *Progressive Animal Welfare Soc'y v. Univ. of Wa.*, 125 Wash.2d 243, 250-51, 884 P.2d 592 (1994) (quoting *Hearst Corp. v. Hoppe*, 90 Wash.2d 123, 127, 580 P.2d 246 (1978)). Courts must liberally construe the PRA's disclosure provisions to promote full *256 access to public records and narrowly construe its exemptions. Former RCW 42.17.251 (1992). We are cognizant of the PRA's policy "that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." *Smith v. Okanogan County*, 100 Wash.App. 7, 11, 994 P.2d 857 (2000) (quoting former RCW 42.17.340(3) (1992)).

**783 ¶ 36 Under the PRA, all state and local agencies must make available for public inspection and copying any public record not falling within a statutory exemption. Former RCW 42.17.260(1) (1997). The PRA requires agencies to provide "the fullest assistance to inquirers and the most timely possible action on requests for information." *Spokane Research & Defense Fund v. West Cent. Cmty. Dev. Ass'n*, 133 Wash.App. 602, 606, 137 P.3d 120 (2006)

(quoting former RCW 42.17.290 (1995)). Further, agencies "shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request" except under very limited circumstances. Former RCW 42.17.270 (1987). "The agency has the burden of proving that refusing to disclose 'is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.'" *Smith*, 100 Wash.App. at 11, 994 P.2d 857 (quoting former RCW 42.17.340(1)).

[4] ¶ 37 The PRA closely parallels the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1970), as amended, (Supp.V, 1975); thus, where appropriate, Washington courts look to judicial interpretations of FOIA in construing the PRA. *Hearst Corp.*, 90 Wash.2d at 128, 580 P.2d 246.

¶ 38 C. *The Electronic Information Log-Item 1*. The Alliance first contends that the County violated the PRA by failing to conduct a reasonably adequate search for the electronic information log of the BPD's seating chart, including the date created data field. The Alliance asserts, and the County does not dispute, that the County did not search Ms. Knutsen's original computer.

[5][6][7] *257 ¶ 39 "The adequacy of the agency's search is judged by a standard of reasonableness, construing the facts in the light most favorable to the requestor." *Citizens Comm'n on Human Rights v. Food & Drug Admin.*, 45 F.3d 1325, 1328 (9th Cir.1995). An agency fulfills its obligations under the PRA if it can demonstrate beyond a material doubt that its search was "reasonably calculated to uncover all relevant documents." *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C.Cir.1984) (quoting *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1350-51 (D.C.Cir.1983)). Moreover, the agency must show that it "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C.Cir.1990).

[8] ¶ 40 Importantly, the adequacy of an agency's search is separate from the question of whether the requested documents are found. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C.Cir.1999). As the federal courts have made clear, "the issue to

be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the *search* for those documents was *adequate*.” Weisberg, 745 F.2d at 1485. The adequacy of the search, in turn, is judged by a standard of reasonableness and depends upon the particular facts of each case. *Id.*

[9][10] ¶ 41 At the summary judgment stage, where the agency has the burden to show that it acted in accordance with the statute, the trial court may rely on affidavits submitted by the agency demonstrating the adequacy of the search. Valencia-Lucena, 180 F.3d at 326 (quoting Oglesby, 920 F.2d at 68). Affidavits describing agency search procedures are sufficient for summary judgment purposes only if they were relatively detailed, nonconclusory, and not impugned by evidence in the record of bad faith on the part of the agency. Zemansky v. U.S. Envtl. Prot. Agency, 767 F.2d 569, 573 (9th Cir.1985) (quoting *258 McGehee v. Cent. Intelligence Agency, 697 F.2d 1095, 1102 (D.C.Cir.1983)). Such affidavits must set forth the search terms and the type of search performed, and aver that all files likely to contain responsive materials, if such records exist, were searched. Valencia-Lucena, 180 F.3d at 326 (quoting Oglesby, 920 F.2d at 68).

[11] ¶ 42 However, if a review of the record raises substantial doubt, particularly where the requests are well defined and there are positive indications of overlooked materials, summary judgment in favor of the agency is inappropriate. *Id.* (quoting Founding Church of Scientology v. Nat'l Sec. Agency, 610 F.2d 824, 837 (D.C.Cir.1979)).

[12] ¶ 43 Here, the County did not provide the record requested—a *complete* electronic**784 information log showing the date of creation of the County's seating chart—because it could not be located on Ms. Knutsen's new computer. But Ms. Knutsen's *new* computer was the only place searched. Mr. Fiedler explained that the original information log could not be found on Ms. Knutsen's new computer because documents on employees' personal or C drives are not backed up on the County network, and therefore, “the only information contained in that particular computer's Hard Drive would be found on its hard drive.” CP at 58. Mr. Fiedler appeared to suggest that the log also could not be found on Ms. Knutsen's old hard drive because “standard practice of the County

of Spokane ISD” is to wipe hard drives before they are sold or rebuilt and that “this process was followed with regard to Ms. Knutsen's PC in April 2005.” CP at 58. Mr. Fiedler did not state that Ms. Knutsen's old computer had been searched.

¶ 44 However, the evidence shows that Ms. Knutsen's computer was rebuilt and given to another employee in August 2005—almost three months after the Alliance's request. Contrary to Mr. Fiedler's affidavit, the County admitted it does not know whether the wipe occurred in April 2005. Not only does the County admit that it does not know whether the wipe occurred and has no records showing when the hard drive in Ms. Knutsen's old computer was *259 wiped, or who performed that work, the County admits it made no effort to find out in response to the Alliance's May 16, 2005 request.

¶ 45 In Campbell v. United States Department of Justice, 164 F.3d 20, 28-29 (D.C.Cir.1998), the court held that a search was inadequate when it was evident from the agency's disclosed records that a search of another of its records system might uncover the documents sought. The court in Campbell held that the agency “‘cannot limit its search’ ” to only one place if there are additional sources “‘that are likely to turn up the information requested.’ ” *Id.* at 28 (quoting Oglesby, 920 F.2d at 68). The court explained:

An agency has discretion to conduct a standard search in response to a general request, but it must revise its assessment of what is “reasonable” in a particular case to account for leads that emerge during its inquiry. Consequently, the court evaluates the reasonableness of an agency's search based on what the agency knew at its conclusion rather than what the agency speculated at its inception.

Id. Likewise, the court in Valencia-Lucena stated: “[T]his court has required agencies to make more than perfunctory searches and, indeed, to follow through on obvious leads to discover requested documents.” Valencia-Lucena, 180 F.3d at 325.

[13] ¶ 46 The Alliance persuasively argues that the County's affidavits regarding this issue are conclusory, fail to provide sufficient detail to evidence an adequate search, and are controverted by other evidence in the record. “It is well-settled that if an

agency has reason to know that certain places may contain responsive documents, it is obligated ... to search barring an undue burden." *Id.* at 327 (agency's "failure to search the center it had identified as a likely place where the requested documents might be located clearly raises a genuine issue of material fact as to the adequacy of the [agency's] search").

¶ 47 The County failed to conduct an adequate search for the complete electronic information log showing the date *260 the seating chart was created. It did not search the computer Ms. Knutsen was using when the seating chart was created. On de novo review, the record indicates that the search was deficient and summary judgment for the County was not proper.

¶ 48 D. *Identities of Ron and Steve-Item 2.* The Alliance also contends that the County failed to conduct an adequate search for the records responsive to the second paragraph of its May 16, 2005 records request.

¶ 49 The Alliance's May 16, 2005 records request asked for documents that recorded "[t]he identities of 'Ron & Steve' individuals who are situated near the center of the seating chart [and] the identity of the individual listed as 'Steve' in the cubicle with the number 7221 at the top of the chart." CP at 51. In response to this item, the County stated that it was not required to explain or interpret**785 public records. Nonetheless, Ms. Knutsen later stated in an affidavit that she conducted a search for documents which might reference the identities Ron and Steve and Steve, but found none. Specifically, she stated: "[T]here are no documents which reference the seating chart and identify the full names of 'Ron and Steve' or 'Steve' therein." CP at 62.

¶ 50 The Alliance argues that at the time of the May 16, 2005 request, the County had at least three documents responsive to the second item. The Alliance points to e-mails of March 2005 regarding logistical support for Ron Hand's and Steve Harris's cubicles, and the work list referred to in one of these e-mails. The Alliance argues that the County failed to provide these documents in response to its request and, in doing so, violated the PRA.

¶ 51 The three documents were addressed at the summary judgment hearing on May 13, 2008. The Alliance admitted that those three documents had

been provided to it by the County in November 2005 in response to a separate public records request. The Alliance went on to argue that "it just shows that there are plenty of records that have Ron Hand's name on it, Steve Harris's name, Steve Davenport." RP (May 13, *261 2008) at 23. The Alliance clarified that it was not seeking to litigate the issue of whether or not those individuals should have been hired, rather it "just wanted a record that showed their identity." RP (May 13, 2008) at 23.

¶ 52 The documents produced by the Alliance were not sufficient to defeat the County's motion for summary judgment regarding Item 2. Relying on *Daines v. Spokane County*, 111 Wash.App. 342, 44 P.3d 909 (2002), the County correctly argues that there is no cause of action under the PRA to enforce the re-disclosure of records known by the Alliance to already be in its possession.

¶ 53 In *Daines*, the plaintiff, Bernard Daines-who was a party to a separate, pending administrative action-sued Spokane County under the PDA, seeking an order to produce e-mails written and received by two county commissioners concerning growth management, as well as statutory per diem penalty and costs for noncompliance. *Id.* at 344-45, 44 P.3d 909.

¶ 54 In *Daines*, pursuant to a CR 26 discovery order in an administrative action, the County produced certain e-mails exchanged by the county commissioners. *Id.* at 345, 44 P.3d 909. Two years later, in February 1999, Mr. Daines submitted a written request under the PDA for all e-mails written and received by two named county commissioners between January 1, 1997, and February 8, 1999, concerning growth management. *Id.* Approximately one month later, he asked for copies of all e-mails exchanged by the commissioners between January 1 and April 17, 1997. *Id.*

¶ 55 The County denied both requests. *Id.* In a letter to Mr. Daines, the County explained that no records satisfied his requests because e-mail was stored on magnetic discs-which were erased every five days-and none of the e-mails requested by Mr. Daines had been saved. *Id.* However, in reviewing his own files, Mr. Daines came across the materials from the administrative action. *Id.* The *Daines* court noted that "[i]t was precisely this discovery that alerted him that the County's response to his request was false." *Id.* at

348, 44 P.3d 909. Then, “[a]rmed with the knowledge that the records *262 did exist,” Mr. Daines filed an action to “enforce strict compliance” with the PDA. *Id.* at 345-46, 44 P.3d 909. Mr. Daines argued that the PDA required full compliance with requests and claimed that the County’s first response was a per se violation of the PDA. *Id.* at 346, 44 P.3d 909. At trial, Mr. Daines conceded for the sake of argument that the e-mails already in his possession from the administrative action were the very items he requested in the PDA action. *Id.* at 345, 44 P.3d 909.

¶ 56 This court determined that Mr. Daines was not a “prevailing party” entitled to a remedy under the PDA. *Id.* at 347, 44 P.3d 909. In light of the fact that Mr. Daines: (1) had the records in his own files before he filed the action, and (2) knew of this fact, the action could not reasonably be regarded as necessary to obtain the information. *Id.* at 348, 44 P.3d 909. This court **786 went on to state that the statute’s purpose “to empower citizens to extract information from reluctant agencies” would not be served under such facts. *Id.* Accordingly, this court concluded that the PDA did not provide relief to a plaintiff who had the records in hand before the lawsuit was filed. *Id.*

[14] ¶ 57 Here, as in *Daines*, the Alliance sought to establish a public records violation as the result of the County’s failure to produce certain e-mails and documents in response to the May 16, 2005 request. Like the plaintiff in *Daines*, the Alliance effectively sought to penalize the County for failing to disclose those records, yet again. And while the Alliance also argues that other documents must surely exist, such an argument is entirely speculative and, therefore, insufficient to defeat this part of the County’s motion for summary judgment. Thus, the trial court properly granted summary judgment to the County with respect to Item 2.

[15] ¶ 58 E. *The Alliance’s Motion to Compel Discovery*. The Alliance next contends that the trial court erred by denying its motion to compel discovery. We review a trial court’s decision denying a motion to compel discovery for an abuse of discretion where its decision is manifestly unreasonable or based on untenable grounds or reasons. *263 *Lindblad v. Boeing Co.*, 108 Wash.App. 198, 207, 31 P.3d 1 (2001).

¶ 59 On appeal, the Alliance contends that the County engaged in a pattern of unjustified resistance

to discovery. According to the Alliance, public records plaintiffs have the same right to discovery as other plaintiffs under discovery rules. In response, the County first argues that the Alliance waived any argument regarding discovery when it went forward with its own summary judgment motion at the hearing on May 13, 2008. Second, the County argues that the Alliance’s discovery was overreaching and exceeded not only the scope of discovery typically allowed in a FOIA case, but also the scope of the May 16, 2005 records request at issue.

¶ 60 The Alliance contends that there is no evidence that Washington courts place more restrictions on discovery in a public records case than any other; rather, discovery is bound only by the civil rules. The Alliance further argues that the subject matter of a public records action goes beyond the simple existence or nonexistence of relevant documents, to include the agency’s decision not to disclose records and the grounds for that decision.

¶ 61 The Washington cases cited by the Alliance, however, contain only passing references to discovery and are generally not helpful. But there is substantial federal law on the issue. As noted above, the Washington public disclosure act closely parallels the federal FOIA, “and judicial interpretations of that Act are therefore particularly helpful in construing our own.” *Smith*, 100 Wash.App. at 13, 994 P.2d 857.

[16][17] ¶ 62 In general, discovery is not part of a FOIA case, and the decision whether to allow discovery rests within the discretion of the trial court. *Schiller v. Immigration & Naturalization Serv.*, 205 F.Supp.2d 648, 653 (W.D.Tex.2002). Federal courts typically dispose of FOIA cases on motions for summary judgment before a plaintiff is able to conduct discovery. *Id.* (citing *Rugiero v. U.S. Dep’t of Justice*, 257 F.3d 534, 544 (6th Cir.2001)). “When discovery is permitted it is to be ‘sparingly granted.’” *Id.* (quoting *264 *Pub. Citizen Health Research Group v. Food & Drug Admin.*, 997 F.Supp. 56, 72 (D.D.C.1998), *aff’d in part, rev’d on other grounds*, 185 F.3d 898 (D.C.Cir.1999)).

[18] ¶ 63 In an action under FOIA, the scope of discovery is limited to whether complete disclosure has been made by the agency in response to a request for information. *Niren v. Immigration & Naturalization Serv.*, 103 F.R.D. 10, 11 (D.Or.1984). “Whether a

thorough search for documents has taken place and whether withheld items are exempt from disclosure are permissible avenues for discovery.” *Id.* In fact, when courts have permitted discovery in FOIA cases, it generally is limited to the scope of the agency's search and its indexing and classification procedures. *Schiller*, 205 F.Supp.2d at 653-54 (quoting *Church of Scientology v. Internal Revenue Serv.*, 137 F.R.D. 201, 202 (D.Mass.1991)).

**787 [19] ¶ 64 Here, the County persuasively argues that the Alliance's discovery was overreaching. The complaint references only one request for public records-the Alliance's May 16, 2005 letter. The discovery sought by the Alliance went far beyond the issue of whether a reasonably adequate search for documents had taken place. Rather, the Alliance inquired into such areas as: hiring practices and job postings; information about County meetings whereby the participants discussed withholding records, the identity of those who make the hiring decisions, the experience and qualifications of those who had applied for the positions of development assistance coordinator 1 and 2, Ms. Knutsen's promotion date and the hiring process by which she was selected for her current position, and facts regarding the hiring of three specifically named individuals who appear to have nothing to do with this case.

[20] ¶ 65 Discovery which seeks information concerning “the policies, procedures, and operational guidelines” for an agency's operations “far exceeds the limited scope of discovery usually allowed in a FOIA case concerning factual disputes surrounding the adequacy of the search for documents.” *Schiller*, 205 F.Supp.2d at 654. Accordingly, the *265 trial court did not abuse its discretion by denying the Alliance's motion to compel.

¶ 66 F. *Conclusion.* The County violated the PRA by failing to conduct a reasonably adequate search for the electronic information log. Accordingly, we reverse the summary judgment related to Item 1 of the Alliance's request and affirm summary judgment in favor of the County on Item 2-the identities of Ron and Steve, documents provided to the Alliance under a previous request. We affirm the denial of the motion to compel.

¶ 67 Finally, we remand to the trial court for determination of attorney fees, costs, and penalties against

the County pursuant to former RCW 42.17.340(4) (recodified as RCW 42.56.550 in July 2006), and for a determination of attorney fees and costs on appeal related to the issue of the failure of the County to make a reasonably adequate search for the electronic information log. *See* RAP 18.1(i).

WE CONCUR: SWEENEY and BROWN, JJ.

ORDER DENYING MOTION FOR RECONSIDERATION AND GRANTING MOTION TO PUBLISH

The court has considered Neighborhood Alliance's motion for reconsideration, the response thereto, and the record and file herein, and is of the opinion the motion should be denied.

The court has also considered Spokane County's motion to publish the court's opinion of August 11, 2009, the response thereto, and the record and file herein, and is of the opinion the motion to publish should be granted. Therefore,

IT IS ORDERED the motion for reconsideration is denied.

IT IS FURTHER ORDERED the motion to publish is granted. The opinion filed by the court in August 11, 2009, shall be modified on page 1 to designate it is a published opinion and on page 29 by deletion of the following language:

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Wash.App. Div. 3, 2009.
Neighborhood Alliance of Spokane County v. County of Spokane
153 Wash.App. 241, 224 P.3d 775

END OF DOCUMENT

APPENDIX B

RECEIVED

JUN 12 2006

RECEIVED

JUL 12 2006

CENTER FOR JUSTICE

**IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN**

**NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, a non-profit
corporation,**

Plaintiff,

vs.

**COUNTY OF SPOKANE, a political
subdivision of the State of Washington,**

Defendant.

Case No.: 06-2-00084-4

**PLAINTIFF'S FIRST SET OF REQUESTS
FOR ADMISSION**

AND: RESPONSES THERETO

TO: COUNTY OF SPOKANE:

PLEASE TAKE NOTICE that under Civil Rule 36 you are hereby requested to admit or deny the following statements, opinions of fact, or application of law to fact. If objection is made the response therefore, shall be stated. If a denial is made, your answer shall specifically set forth in detail the reasons why you cannot truthfully admit or deny the matter.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO ADMIT THE TRUTH OF ANY MATTER AS REQUESTED, AND IF THE PLAINTIFF THEREAFTER, PROVES THE TRUTH OF THE MATTER, THE PLAINTIFF MAY APPLY TO THE ABOVE ENTITLED COURT FOR AN ORDER REQUIRING YOU TO PAY THE REASONABLE EXPENSES INCURRED IN MAKING THAT PROOF, INCLUDING REASONABLE ATTORNEY'S FEES PURSUANT TO CR 37(c).

**PLAINTIFF'S FIRST SET OF REQUESTS FOR
ADMISSION- 1**

*Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211*

150

1 Pursuant to CR 36, Plaintiffs hereby request that Defendants respond to the following
2 Requests for Admissions, under oath, within 30 days.

3 **INSTRUCTIONS**

4 1. Your answers must include all information concerning the matters inquired about and
5 available to you, your attorneys or other agents.

6 2. If you fail to respond in a timely fashion, you waive any objection to the Requests, and
7 the Court may order all Requests deemed admitted.

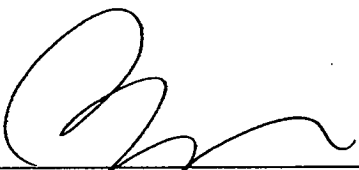
8 3. In formulating your answer you may not give lack of information or knowledge as a
9 reason for failure to admit or deny, unless you state that you have made reasonable inquiry that
10 the information known or readily obtainable by you is insufficient to enable you to admit or deny
11 the Request.

12 4. If only part of a Request is objectionable, you must answer the remainder of the
13 Request.

14 5. Any objection to a Request or part of a Request must clearly state the specific grounds
15 for the objection.

16 6. A denial of all or any portion of each Request must be unequivocal.

17
18 DATED this 7 day of JUNE, 2006.

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21 
22 BREEAN L. BEGGS, WSBA #20795
Attorney for Plaintiffs

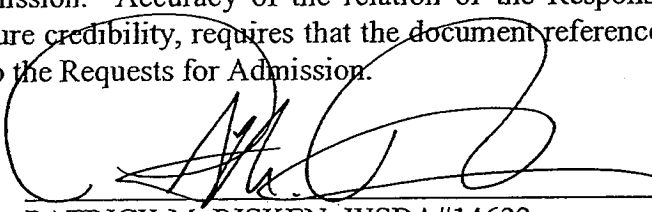
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1 REQUESTS FOR ADMISSION

2 REQUEST FOR ADMISSION NO.1: Admit that the Building and Planning Department of
3 Spokane County received a public records request dated May 3, 2005 from the Neighborhood
4 Alliance of Spokane County (NASC).

5 RESPONSE:

6 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
7 Request for Admission shall be served with the request. Those documents have not been
8 served with this Request for Admission. Accuracy of the relation of the Response to the
9 Request for Admission, and to ensure credibility, requires that the document referenced in the
10 Request be attached as an exhibit to the Requests for Admission.

11 
12 PATRICK M. RISKEN, WSBA#14632

13 Without waiving Objection: Admitted that a request for records was dated May 3, 2005,
14 addressed to James Manson and Pam Knutson but not the Spokane County Department of
15 Building and Planning, was received by that Department. Denied to the extent that the
16 Request for Admission represents that the May 3, 2005, letter from the Neighborhood Alliance
17 of Spokane County was addressed to "the Building and Planning Department of Spokane
18 County."

19 REQUEST FOR ADMISSION NO.2: Admit that in response to the May 3rd request for all
20 records created in January, February, or March of 2005 displaying either current or proposed
21 office space, the County provided NASC with three seating charts.

22 RESPONSE:

23 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
24 Request for Admission shall be served with the request. Those documents have not been
25 served with this Request for Admission. Accuracy of the relation of the Response to the
26 Request for Admission, and to ensure credibility, requires that the document referenced in the
27 Request be attached as an exhibit to the Requests for Admission.

28 
29 PATRICK M. RISKEN, WSBA#14632

1 Without waiving Objection: Admitted that Spokane County provided three seating chart
2 documents to the Neighborhood Alliance in response to the NASC's May 3, 2005, public
3 records request. Denied to the extent that the Request for Admission mischaracterizes what
4 specifically was requested by the NASC letter of May 3, 2005; that letter requested "current or
5 proposed office space assignments" and not just office space, which therefore could lead to an
6 inaccurate or mistaken Response or subsequent confusion generated by the Response.

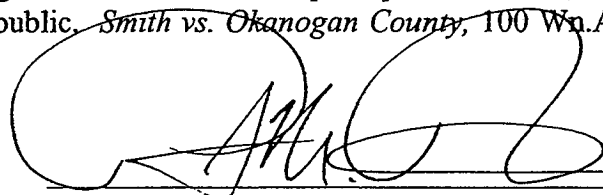
7 REQUEST FOR ADMISSION NO.3: Admit that one of the three seating charts provided to
8 NASC was dated February 22, 2005 at 08:22 a.m.

9 RESPONSE:

10 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
11 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
12 the application of law to fact, including the genuineness of any documents described in that
13 Request. None of those areas of proper Request for Admission are within this particular
14 Request; and

15 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
16 Request for Admission shall be served with the request. Those documents have not been
17 served with this Request for Admission. Accuracy of the relation of the Response to the
18 Request for Admission, and to ensure credibility, requires that the document referenced in the
19 Request be attached as an exhibit to the Requests for Admission; and

20 OBJECTION: The document referenced speaks for itself; not a proper subject of inquiry in a
21 lawsuit filed under RCW 42.17.340. The inquiry in such a lawsuit or claim is either (1)
22 whether the document requested was provided timely, or (2) whether a specific exemption
23 cited by the agency actually excuses production of the document or record requested. Actions
24 under RCW 42.17.340 do not examine what a document or record might say or represent. The
25 Public Disclosure Act does not require agencies to research or explain public records, but only
26 to make those records accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7,
27 994 P.2d 857 (2000).



PATRICK M. RISKEN, WSBA#14632

28 REQUEST FOR ADMISSION NO.4: Admit that one of the three seating charts provided to
29 NASC was dated April 18, 2005 at 08:55 a.m.

30 PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
AND RESPONSES THERETO

page 4

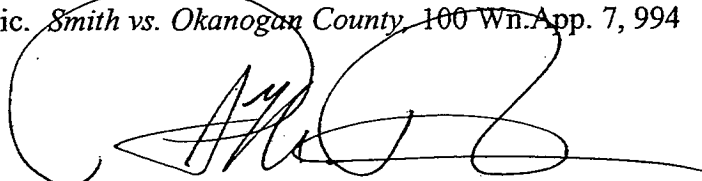
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818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

1 RESPONSE:

2 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
3 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
4 the application of law to fact, including the genuineness of any documents described in that
5 Request. None of those areas of proper Request for Admission are within this particular
6 Request; and

7 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
8 Request for Admission shall be served with the request. Those documents have not been
9 served with this Request for Admission. Accuracy of the relation of the Response to the
10 Request for Admission, and to ensure credibility, requires that the document referenced in the
11 Request be attached as an exhibit to the Requests for Admission; and

12 OBJECTION: Document speaks for itself; not a proper subject of inquiry in a lawsuit filed
13 under RCW 42.17.340. The inquiry in such a lawsuit or claim is either (1) whether the
14 document was provided timely, or (2) whether a specific exemption cited by the agency
15 actually excuses production of the document or record requested. Actions under RCW
16 42.17.340 do not examine what a document or record might say or represent. . The Public
17 Disclosure Act does not require agencies to research or explain public records, but only to
18 make those records accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994
19 P.2d 857 (2000).



16 PATRICK M. RISKEN, WSBA#14632

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19 REQUEST FOR ADMISSION NO.5: Admit that the one of the three seating charts provided
20 to NASC was not dated (hereinafter "undated seating chart").

21 RESPONSE:

22 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
23 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
24 the application of law to fact, including the genuineness of any documents described in that
25 Request. None of those areas of proper Request for Admission are within this particular
26 Request; and

27 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
28 Request for Admission shall be served with the request. Those documents have not been
29 served with this Request for Admission. Accuracy of the relation of the Response to the

30 PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
AND RESPONSES THERETO

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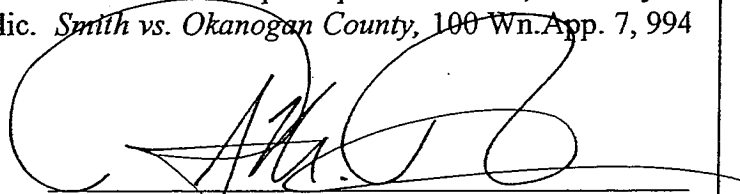
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Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

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1 Request for Admission, and to ensure credibility, requires that the document referenced in the
2 Request be attached as an exhibit to the Requests for Admission; and

3 OBJECTION: Document speaks for itself; not a proper subject of inquiry in a lawsuit filed
4 under RCW 42.17.340. The inquiry in such a lawsuit or claim is either (1) whether the
5 document was provided timely, or (2) whether a specific exemption cited by the agency
6 actually excuses production of the document or record requested. Actions under RCW
7 42.17.340 do not examine what a document or record might say or represent. . The Public
8 Disclosure Act does not require agencies to research or explain public records, but only to
9 make those records accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994
10 P.2d 857 (2000).

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PATRICK M. RISKEN, WSBA#14632

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12 REQUEST FOR ADMISSION NO.6: Admit that on May 16th NASC requested the complete
13 electronic file information logs for the undated county planning division seating chart
14 including, but not necessarily limited to, the information in the "date created" data field for the
15 document as it existed on the specific Microsoft Publisher electronic document file created for
16 the referenced seating chart and that the Building and Planning Department of Spokane
17 County received this request.

18 RESPONSE:

19 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
20 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
21 the application of law to fact, including the genuineness of any documents described in that
22 Request. None of those areas of proper Request for Admission are within this particular
23 Request; and

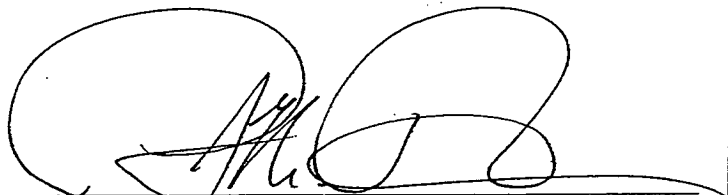
24 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
25 Request for Admission shall be served with the request. Those documents have not been
26 served with this Request for Admission. Accuracy of the relation of the Response to the
27 Request for Admission, and to ensure credibility, requires that the document referenced in the
28 Request be attached as an exhibit to the Requests for Admission; and

29 OBJECTION: The Public Disclosure Act does not require agencies to research or explain
30 public records, but only to make those records accessible to the public. *Smith vs. Okanogan
County*, 100 Wn.App. 7, 994 P.2d 857 (2000); and

OBJECTION: This Request for Admission actually contains two separate requests.

PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
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PATRICK M. RISKEN, WSBA#14632

Without waiving Objection:

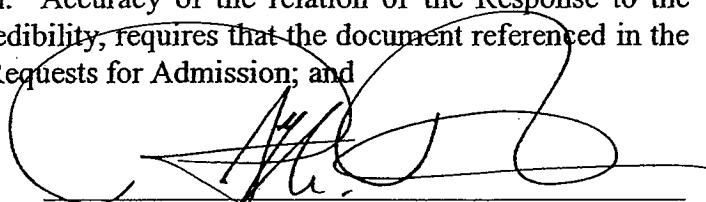
Admitted to the extent that Spokane County's Human Resources Department received a letter from the Neighborhood Alliance of Spokane dated May 16, 2005, requesting information in substantially the form set forth in this Request for Admission. Denied to the extent that the Request for Admission mischaracterizes or misstates the actual content of the May 16, 2005, NASC letter.

REQUEST FOR ADMISSION NO.7: Admit that Ms. Cathy Malzahn responded to the request for the complete electronic file logs regarding the undated seating chart on June 6, 2005 with a copy of the attached chart.

RESPONSE:

OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in that Request. None of those areas of proper Request for Admission are within this particular Request; and

OBJECTION: CR 36(a) requires copies of the documents which are the subject of the Request for Admission shall be served with the request. Those documents have not been served with this Request for Admission. Accuracy of the relation of the Response to the Request for Admission, and to ensure credibility, requires that the document referenced in the Request be attached as an exhibit to the Requests for Admission; and



PATRICK M. RISKEN, WSBA#14632

Without waiving Objection:

Admitted to the extent that Ms. Malzahn responded to the NASC's May 16, 2005, request by letter dated May 23, 2005, which stated that Ms. Malzahn expected to complete the process of gathering that information by 5:00 p.m. on June 6, 2005. Admitted that Ms. Malzahn responded to the NASC's request for the information requested as subsection "1" of the

PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
AND RESPONSES THERETO

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1 NASC's May 16, 2005, request for the "complete electronic file information logs", by letter
2 dated June 6, 2005, with a copy of that information enclosed. Denied to the extent that any
3 representation of the correspondence referenced in this Request for Admission or Ms.
4 Malzahn's correspondence in response thereto is inconsistent with the actual contents of those
5 letters or materials provided therewith.

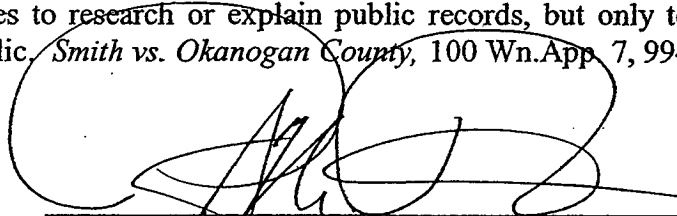
6 REQUEST FOR ADMISSION NO.8: Admit that the date created for all of the Microsoft
7 Publisher documents found in the folder C:\Documents and Settings\pknutsen\My Documents
8 is 4/27/2005 at 1:36 or 1:37 PM.

9 RESPONSE:

10 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
11 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
12 the application of law to fact, including the genuineness of any documents described in that
13 Request. None of those areas of proper Request for Admission are within this particular
14 Request; and

15 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
16 Request for Admission shall be served with the request. Those documents have not been
17 served with this Request for Admission. Accuracy of the relation of the Response to the
18 Request for Admission, and to ensure credibility, requires that the document referenced in the
19 Request be attached as an exhibit to the Requests for Admission; and

20 OBJECTION: Document speaks for itself; not a proper subject of inquiry in a lawsuit filed
21 under RCW 42.17.340. The inquiry in such a lawsuit or claim is either (1) whether the
22 document was provided timely, or (2) whether a specific exemption cited by the agency
23 actually excuses production of the document or record requested. Actions under RCW
24 42.17.340 do not examine what a document or record might say or represent. . The Public
25 Disclosure Act does not require agencies to research or explain public records, but only to
26 make those records accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994
27 P.2d 857 (2000).



PATRICK M. RISKEN, WSBA#14632

28 REQUEST FOR ADMISSION NO.9: Admit that the date modified for all of the Microsoft
29 Publisher documents found in the folder C:\Documents and Settings\pknutsen\My Documents
30 is prior to 4/27/2005.

PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
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1
2 RESPONSE:

3 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
4 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
5 the application of law to fact, including the genuineness of any documents described in that
6 Request. None of those areas of proper Request for Admission are within this particular
7 Request; and

8 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
9 Request for Admission shall be served with the request. Those documents have not been
10 served with this Request for Admission. Accuracy of the relation of the Response to the
11 Request for Admission, and to ensure credibility, requires that the document referenced in the
12 Request be attached as an exhibit to the Requests for Admission; and

13 OBJECTION: Document speaks for itself; not a proper subject of inquiry in a lawsuit filed
14 under RCW 42.17.340. The inquiry in such a lawsuit or claim is either (1) whether the
15 document was provided timely, or (2) whether a specific exemption cited by the agency
16 actually excuses production of the document or record requested. Actions under RCW
17 42.17.340 do not examine what a document or record might say or represent. The Public
18 Disclosure Act does not require agencies to research or explain public records, but only to
19 make those records accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994
20 P.2d 857 (2000).

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23 PATRICK M. RISKEN, WSBA#14632

24 REQUEST FOR ADMISSION NO. 10: Admit that the "date created" for the Publisher
25 documents has been modified from the original date that they were created.

26 RESPONSE:

27 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
28 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
29 the application of law to fact, including the genuineness of any documents described in that
30 Request. None of those areas of proper Request for Admission are within this particular
31 Request; and

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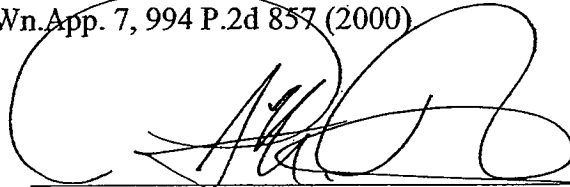
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(509) 455-5200; fax (509) 455-3632

1 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
2 Request for Admission shall be served with the request. Those documents have not been
3 served with this Request for Admission. Accuracy of the relation of the Response to the
4 Request for Admission, and to ensure credibility, requires that the document referenced in the

5 OBJECTION: Document speaks for itself; not a proper subject of inquiry in a lawsuit filed
6 under RCW 42.17.340. The inquiry in such a lawsuit or claim is either (1) whether the
7 document was provided timely, or (2) whether a specific exemption cited by the agency
8 actually excuses production of the document or record requested. Actions under RCW
9 42.17.340 do not examine what a document or record might say or represent, or whether the
10 document might have been modified at any time. The Public Disclosure Act does not require
11 agencies to research or explain public records, but only to make those records accessible to the
12 public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000)



13 PATRICK M. RISKEN, WSBA#14632

14
15 REQUEST FOR ADMISSION NO. 11: Admit the undated seating chart contained an office
16 space that contained "Ron & Steve".

17 RESPONSE:

18
19 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
20 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
21 the application of law to fact, including the genuineness of any documents described in that
22 Request. None of those areas of proper Request for Admission are within this particular
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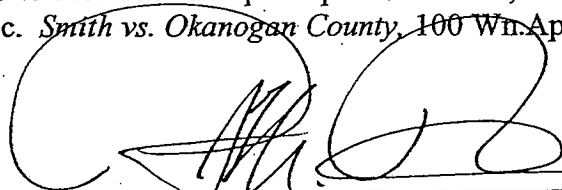
31 PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
32 AND RESPONSES THERETO

page 10

Evans, Craven & Lackie, P.S.

818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

1 42.17.340 do not examine what a document or record might say or represent. . The Public
2 Disclosure Act does not require agencies to research or explain public records, but only to
3 make those records accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994
4 P.2d 857 (2000).

5 
6 PATRICK M. RISKEN, WSBA#14632

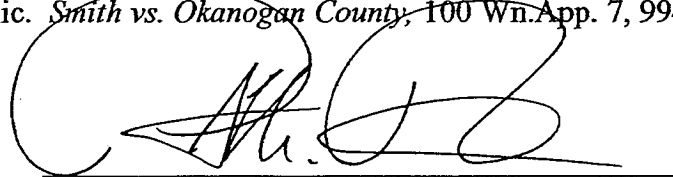
7
8 REQUEST FOR ADMISSION NO. 12: Admit the undated seating chart contained an
9 additional office space on the outside wall containing "Steve" at extension 7221.

10 RESPONSE:

11 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
12 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
13 the application of law to fact, including the genuineness of any documents described in that
14 Request. None of those areas of proper Request for Admission are within this particular
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24 actually excuses production of the document or record requested. Actions under RCW
25 42.17.340 do not examine what a document or record might say or represent. The Public
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27 make those records accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994
28 P.2d 857 (2000).

29 
30 PATRICK M. RISKEN, WSBA#14632

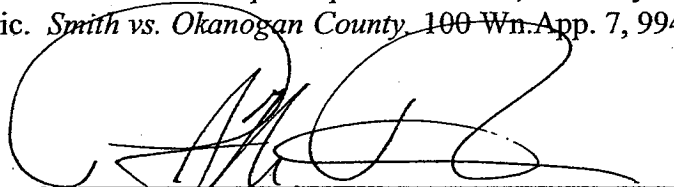
1 REQUEST FOR ADMISSION NO. 13: Admit the "Steve" at extension 7221 on the undated
2 seating chart referred to Steve Davenport.

3 RESPONSE:

4 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
5 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
6 the application of law to fact, including the genuineness of any documents described in that
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17 actually excuses production of the document or record requested. Actions under RCW
18 42.17.340 do not examine what a document or record might say or represent. The Public
19 Disclosure Act does not require agencies to research or explain public records, but only to
20 make those records accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994
21 P.2d 857 (2000).

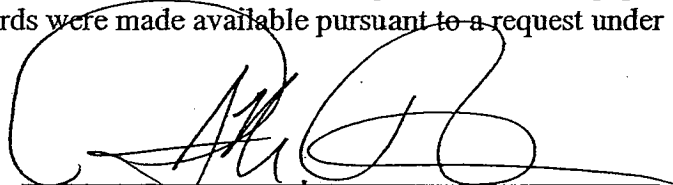
22 
23 PATRICK M. RISKEN, WSBA#14632

24 REQUEST FOR ADMISSION NO. 14: Admit that Pam Knutsen told Amy Cannata of the
25 Spokesman-Review in October of 2005 that the "Ron" listed in the cubicle of "Ron & Steve"
26 in the undated seating chart referred to Ron Hand.

27 RESPONSE:

28 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
29 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
30 the application of law to fact, including the genuineness of any documents described in that
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32 Request; and

1 OBJECTION: Not a proper subject of inquiry in a lawsuit filed under RCW 42.17.340. The
2 inquiry in such a lawsuit or claim is either (1) whether the document was provided timely, or
3 (2) whether a specific exemption cited by the agency actually excuses production of the
4 document or record requested. Actions under RCW 42.17.340 do not examine what a
5 document or record might say or represent, or what someone might have said to another
6 person about the document or record. What someone allegedly told a reporter for a newspaper
7 has nothing to do with whether public records were made available pursuant to a request under
8 the Public Disclosure Act.


PATRICK M. RISKEN, WSBA#14632

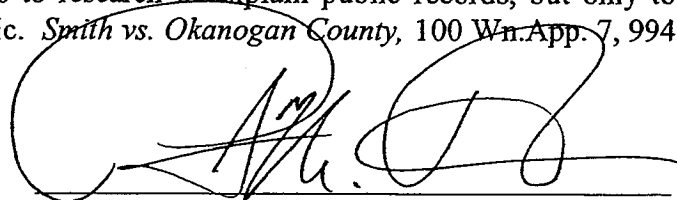
10 REQUEST FOR ADMISSION NO. 15: Admit that the "Ron" listed in the cubicle of "Ron &
11 Steve" in the undated seating chart referred to Ron Hand.

12 RESPONSE:

13 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
14 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
15 the application of law to fact, including the genuineness of any documents described in that
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PATRICK M. RISKEN, WSBA#14632

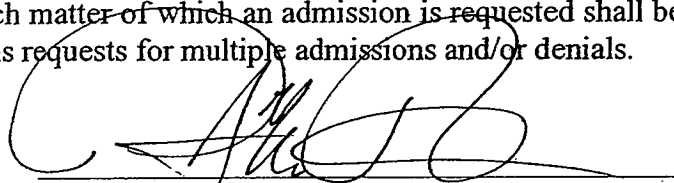
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2
3 REQUEST FOR ADMISSION NO. 16: Admit that on May 16th, 2005, the County had in its
4 possession non-exempt records that contained Ron Hand's full name and would have identified
5 him as the "Ron" in the undated seating chart.

6 RESPONSE:

7 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
8 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
9 the application of law to fact, including the genuineness of any documents described in that
10 Request. None of those areas of proper Request for Admission are within this particular
11 Request; and

12 OBJECTION: The Request for Admission inquires of matters outside the scope of an action
13 under the Public Disclosure Act, see Smith vs. Okanogan County, 100 Wn.App. 7, 994 P.2d
14 857 (2000); and

15 OBJECTION: CR 36(a) requires that each matter of which an admission is requested shall be
16 separately set forth. This Request contains requests for multiple admissions and/or denials.

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PATRICK M. RISKEN, WSBA#14632

20 REOUEST FOR ADMISSION NO. 17: Admit that on May 16th, 2005, the County had in its
21 possession non-exempt records that contained Steve Davenport's full name and would have
22 identified him as the "Steve" at extension 7221 on the undated seating chart.

23 RESPONSE:

24 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
25 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
26 the application of law to fact, including the genuineness of any documents described in that
27 Request. None of those areas of proper Request for Admission are within this particular
28 Request; and

1 OBJECTION: The Request for Admission inquires of matters outside the scope of an action
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3 857 (2000); and

4 OBJECTION: CR 36(a) requires that each matter of which an admission is requested shall be
5 separately set forth. This Request contains requests for multiple admissions and/or denials.
6

7 
8 PATRICK M. RISKEN, WSBA#14632
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10 REQUEST FOR ADMISSION NO. 18: Admit that on May 3, 2005, Pam Knutsen's computer
11 that originally created the seating charts provided to the Neighborhood Alliance had not yet
12 had its hard drive wiped clean.

13 RESPONSE:

14 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
15 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
16 the application of law to fact, including the genuineness of any documents described in that
17 Request. None of those areas of proper Request for Admission are within this particular
18 Request; and

19 OBJECTION: Not a proper subject of inquiry in a lawsuit filed under RCW 42.17.340. The
20 inquiry in such a lawsuit or claim is either (1) whether the document was provided timely, or
21 (2) whether a specific exemption cited by the agency actually excuses production of the
22 document or record requested. Actions under RCW 42.17.340 do not examine record keeping
23 procedures or practices, or equipment maintenance, by a public agency, see Daines vs.
24 Spokane County, 111 Wn.App. 342, 44 P.2d 909 (2002); and

25 OBJECTION: CR 36(a) requires that each matter of which an admission is requested shall be
26 separately set forth. This Request requires certain assumptions or requests for multiple
27 admissions and/or denials.
28

29 
30 PATRICK M. RISKEN, WSBA#14632

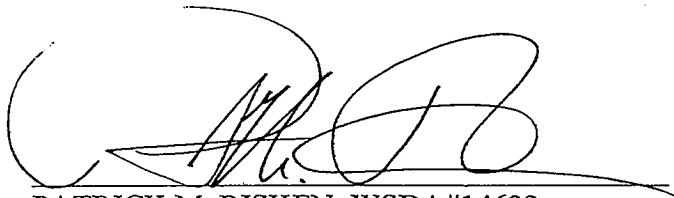
1 REQUEST FOR ADMISSION NO. 19: Admit that on May 16, 2005, Pam Knutsen's
2 computer that originally created the seating charts provided to the Neighborhood Alliance had
3 not yet had its hard drive wiped clean.

4 RESPONSE:

5 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
6 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
7 the application of law to fact, including the genuineness of any documents described in that
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9 Request; and

10 OBJECTION: CR 36(a) requires that each matter of which an admission is requested shall be
11 separately set forth. This Request requires certain assumptions or requests for multiple
12 admissions and/or denials; and

13 OBJECTION: Not a proper subject of inquiry in a lawsuit filed under RCW 42.17.340. The
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17 procedures or practices, or equipment maintenance, by a public agency, see Daines vs.
18 Spokane County, 111 Wn.App. 342, 44 P.2d 909 (2002).

19 
20 PATRICK M. RISKEN, WSBA#14632

21
22 REQUEST FOR ADMISSION NO. 20: Admit that the "Ron & Steve" listed in the undated
23 seating chart did not refer to any persons employed by the County at the time the chart was
24 created.

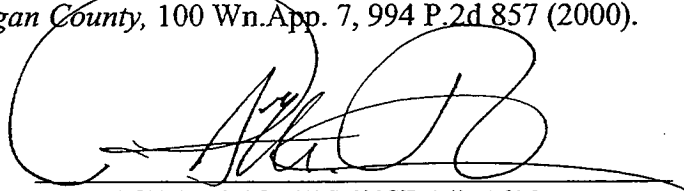
25 RESPONSE:

26 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
27 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
28 the application of law to fact, including the genuineness of any documents described in that

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8 OBJECTION: Not a proper subject of inquiry in a lawsuit filed under RCW 42.17.340. The
9 inquiry in such a lawsuit or claim is either (1) whether the document was provided timely, or
10 (2) whether a specific exemption cited by the agency actually excuses production of the
11 document or record requested. Actions under RCW 42.17.340 do not examine what the
12 representations of a specific document might mean. The Public Disclosure Act does not
13 require agencies to research or explain public records, but only to make those records
14 accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000).

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PATRICK M. RISKEN, WSBA#14632

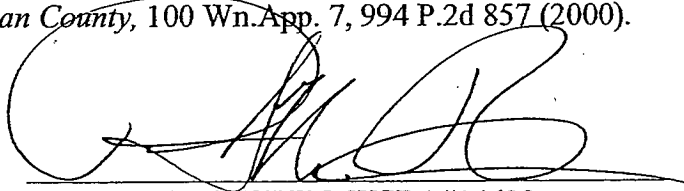
16 REQUEST FOR ADMISSION NO. 21: Admit the undated seating chart contained an office
17 space that contained "Ron & Steve".

18 RESPONSE:

19
20 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
21 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
22 the application of law to fact, including the genuineness of any documents described in that
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29 Request be attached as an exhibit to the Requests for Admission; and

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5 representations of a specific document might mean. The Public Disclosure Act does not
6 require agencies to research or explain public records, but only to make those records
7 accessible to the public. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000).

8 
9 PATRICK M. RISKEN, WSBA#14632

10
11 REQUEST FOR ADMISSION NO. 22: Admit that on May 16th NASC requested the
12 opportunity to review public records created, received, and/or retained by Pam Knutsen, or any
13 other county official or employee, that recorded the identities of "Ron & Steve," individuals
14 who are situated near the center of the undated seating chart and the identity of the individual
15 listed as "Steve" in the cubicle with the number 7221 at the top of the chart.

16 RESPONSE:

17 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
18 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
19 the application of law to fact, including the genuineness of any documents described in that
20 Request. None of those areas of proper Request for Admission are within this particular
21 Request; and

22 OBJECTION: If this Request for Admission refers to a specific document – in this Request
23 perhaps a letter from NASC dated May 16, 2005 – CR 36(a) requires copies of the documents
24 which are the subject of the Request for Admission shall be served with the request. Those
25 documents have not been served with this Request for Admission. Accuracy of the relation of
26 the Response to the Request for Admission, and to ensure credibility, requires that the
27 document referenced in the Request be attached as an exhibit to the Requests for Admission;
28 and

29 OBJECTION: Not a proper subject of inquiry in a lawsuit filed under RCW 42.17.340. The
30 inquiry in such a lawsuit or claim is either (1) whether the document was provided timely, or
31 (2) whether a specific exemption cited by the agency actually excuses production of the
32 document or record requested. This particular Request requires the responding party to make
33 certain factual assumptions which are not appropriate in an action under the Public Disclosure
34 Act.



PATRICK M. RISKEN, WSBA#14632

Without waiving Objection:

Spokane County admits that it received a request for "2) The identities of 'Ron and Steve' individuals who are situated near the center of the seating chart referenced in item #1. Also, the identity of the individual listed as 'Steve' in the cubicle with the number 7221 at the top of the chart.", by letter from the NASC dated May 16, 2005. To the extent that this Request for Admission misstates the content of letters or other documents, Denied.

REQUEST FOR ADMISSION NO. 23: Admit that in response to the request identified in Admission No. 12, Ms. Malzahn refused to provide any records to NASC and stated that such information was exempt from disclosure pursuant to RCW 42.17.260(1).

RESPONSE:

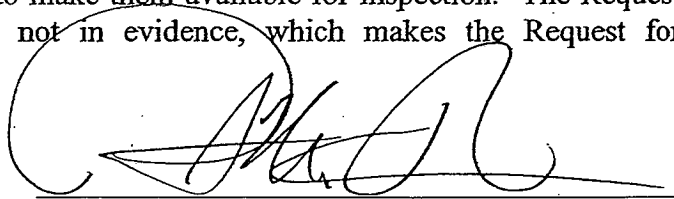
OBJECTION: CR 36(a) requires that each matter of which an admission is requested shall be separately set forth. This Request requires certain assumptions or requests for multiple admissions and/or denials; and

OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in that Request. None of those areas of proper Request for Admission are within this particular Request; and

OBJECTION: CR 36(a) requires copies of the documents which are the subject of the Request for Admission shall be served with the request. Those documents have not been served with this Request for Admission. Accuracy of the relation of the Response to the Request for Admission, and to ensure credibility, requires that the document referenced in the Request be attached as an exhibit to the Requests for Admission; and

OBJECTION: This Request for Admission misrepresents the content of Ms. Malzahn's June 6, 2005, response to the NASC's request for the identities of "Ron and Steve" and "Steve" as set forth in the NASC's letter of May 16, 2005. It is therefore an improper Request for Admission, since it requests a response to a factually unsupported statement; and/or

1 OBJECTION: The Request for Admission is argumentative in that it assumes documents
2 existed and that Ms. Malzahn "refused" to make them available for inspection. The Request
3 for Admission therefore assumes facts not in evidence, which makes the Request for
4 Admission a hypothetical question.



PATRICK M. RISKEN, WSBA#14632

7 REQUEST FOR ADMISSION NO. 24: Admit that the County failed to provide a summary of
8 the record's content that was being withheld and how the specific exemption applied to the Id
9 as required by RCW 42.17.310(4).

10 RESPONSE:

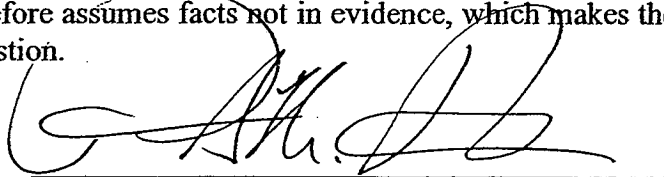
11 OBJECTION: CR 36(a) requires that each matter of which an admission is requested shall be
12 separately set forth. This Request requires certain assumptions or requests for multiple
13 admissions and/or denials; and

14 OBJECTION: The Request for Admission is argumentative, and does not request the
15 admission or denial of a fact or the genuineness of a document as allowed by CR 36(a) or CR
16 26(b); and

17 OBJECTION: The Request for Admission is so vague or incomplete as to fact, document,
18 time or date that it cannot be answered; and

19 OBJECTION: CR 36(a) requires copies of the documents which are the subject of the
20 Request for Admission shall be served with the request. Those documents have not been
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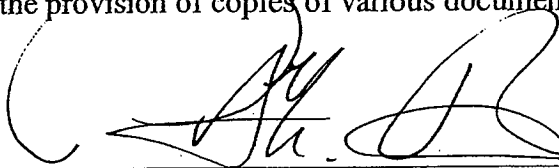
PATRICK M. RISKEN, WSBA#14632

1 REQUEST FOR ADMISSION NO. 25: Admit that the County had documents in its
2 possession at the time of Ms. Malzahn's response on June 6, 2005 that recorded the identities
3 of "Ron & Steve" and of "Steve" in the cubicle with the number 7221 at the top of the chart.

4 RESPONSE:

5 OBJECTION: CR 36(a) requires that each matter of which an admission is requested shall be
6 separately set forth. This Request requires certain assumptions or requests for multiple
7 admissions and/or denials; and/or

8 OBJECTION: The Request for Admission is confusing, in that it assumes that the NASC had
9 requested copies of records which might identify "Ron and Steve." In fact, it had requested
10 the opportunity to review records, and not the provision of copies of various documents which
11 may or may not exist.



12 PATRICK M. RISKEN, WSBA#14632

13 Without waiving Objection:

14 Denied. The Request for Admission misstates the contents of the relevant correspondence, at
15 least as known to Spokane County. The request by the NASC, dated May 16, 2005,
16 specifically requested:

17 "... the opportunity to review public records created, received and/or retained by
18 Pam Knutsen, or any other county official or employee, that record the following
19 information:

- 20 2) The identities of 'Ron & Steve' individuals who are situated near the center of the
21 seating chart referenced in item #1. Also, the identity of the individual listed as
22 'Steve' in the cubicle with the number 7221 at the top of the chart."

23 Ms. Malzahn responded to this particular request for public records by letter dated June 6,
24 2005, reminding the NASC that the Public Disclosure Act does not require agencies to explain
25 the content of public records.

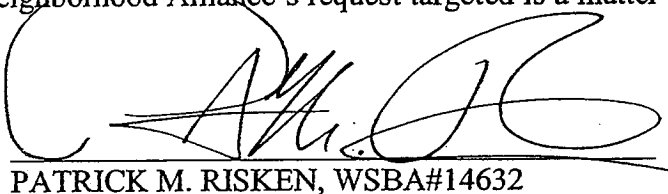
1 REQUEST FOR ADMISSION NO. 26: Admit that NASC's request was for a record created,
2 received, and/or retained that recorded the identity of the individuals in question.

3 RESPONSE:

4 OBJECTION: CR 36(a) allows such a request for admission for the truth of any matter within
5 the scope of CR 26 (b) set forth in the Request that relate to statements or opinions of fact or
6 the application of law to fact, including the genuineness of any documents described in that
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13 Request be attached as an exhibit to the Requests for Admission; and

14 OBJECTION: Not a proper subject of inquiry in a lawsuit filed under RCW 42.17.340. The
15 inquiry in such a lawsuit or claim is either (1) whether the document was provided timely, or
16 (2) whether a specific exemption cited by the agency actually excuses production of the
17 document or record requested. What the Neighborhood Alliance's request targeted is a matter
18 of argument; that request speaks for itself.

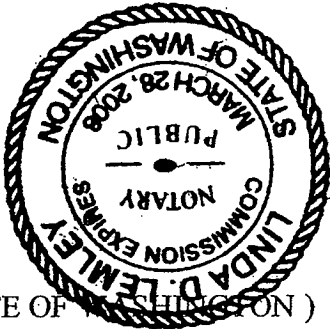
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PATRICK M. RISKEN, WSBA#14632

1 STATE OF WASHINGTON)
2) ss:
3 COUNTY OF SPOKANE)

4 JAMES MANSON, after being first duly sworn upon oath deposes and says:
5 That he is the Director of the Department of Building and Planning for the County of
6 Spokane above-named; that he has read the Responses to Requests for Admission No. 1 and 2; AND 12
7 knows the contents thereof and believes the same to be true and correct.

8 James Manson
9 James Manson

10 SUBSCRIBED AND SWORN TO before me this 12 day of July, 2006.



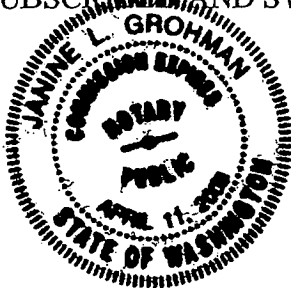
16 Linda D. Lemley
17 NOTARY PUBLIC in and for the
18 State of Washington
19 Residing at: Spokane
20 My Commission Expires: 3-28-08

21 STATE OF WASHINGTON)
22) ss:
23 COUNTY OF SPOKANE)

24 CATHY MALZAHN, after being first duly sworn upon oath deposes and says:
25 That she is the Human Resources Director for the County of Spokane above-named;
26 that she has read the Responses to Requests for Admission No. 7, 22 and 25; knows the
27 contents thereof and believes the same to be true and correct.

28 Cathy Malzahn
29 Cathy Malzahn

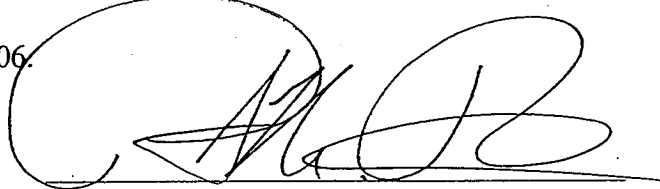
30 SUBSCRIBED AND SWORN TO before me this 12th day of July, 2006.



36 Janine Grohman
37 NOTARY PUBLIC in and for the
38 State of Washington
39 Residing at: Spokane
40 My Commission Expires: 4/11/08

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4 Pursuant to CR 26(g), I have read the responses and/or objections above, and I certify
5 that to the best of my knowledge, information and belief formed after a reasonable inquiry that
6 the responses and objections are: (1) consistent with the Civil Rules and warranted by existing
7 law or a good faith argument for the extension, modification or reversal of existing law;
8 (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or
9 needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or
10 expensive, given the needs of the case, the discovery already had in the case, the amount in
11 controversy and the importance of the issues at stake in the litigation.

12 SIGNED this 12th day of July, 2006.



13 PATRICK M. RISKEN, WSBA#14632
14 Attorney for Defendant
15 County of Spokane
16 My business address is:
17 Evans, Craven & Lackie, P.S.
18 818 West Riverside Ave., Suite 250
19 Spokane, WA 99201

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6
7 **IN THE SUPERIOR COURT OF STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF WHITMAN**

9 **NEIGHBORHOOD ALLIANCE OF**)
10 **SPOKANE COUNTY, a non-profit**)
11 **corporation,**)

Plaintiff,)

12 **vs.**)

13 **COUNTY OF SPOKANE, a political**)
14 **subdivision of the State of Washington,**)

Defendant.)

Case No.: 06-2-00084-4

**PLAINTIFF'S FIRST SET OF WRITTEN
INTERROGATORIES AND REQUESTS
FOR PRODUCTION**

15
16 **TO: COUNTY OF SPOKANE:**

17 Pursuant to CR 33 and CR 34, Plaintiff herewith submits the following Interrogatories and
18 Requests for Production to be answered separately and fully under oath within thirty (30)
19 days from the date of service of said Interrogatories and Requests upon you.

20
21 In answering these Interrogatories and Requests you are required to furnish such
22 information as is available to you, not merely the information which you know of your personal
23 knowledge. This is intended to include any information in the possession of the agent or
24 attorney or any investigator for the answering party. These Interrogatories and Requests shall be
25 continuing in nature, and you are required to serve and file amended answers to said
Interrogatories and Requests promptly upon any additional information being secured by you
which would make the answers initially given incorrect or misleading.

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR
PRODUCTION- 1**

*Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211*

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INSTRUCTIONS

1. These interrogatories are to be answered on behalf of the Defendant. The words "you," "your," "yours," and "Defendant," in the following interrogatories are intended to refer to the Defendant and, if applicable, its attorneys, agents, representatives or investigators.

2. In answering these interrogatories and requests you are required to furnish such information as is available to you, not merely the information which you know of your own personal knowledge. This is intended to include any information in possession of the agent, attorney, or any investigator for the answering party.

3. If Defendant obtains information responsive to these interrogatories after service of the answers hereto, Plaintiff requests that supplemental answers be promptly served consistent with the requirements of court rules.

4. Moreover, pursuant to court rules, Plaintiff requests that Defendant produce and permit Plaintiff to copy documents described below which are now in Defendant's possession, custody, and/or control.

5. Unless otherwise mutually agreed to, inspection and/or copying shall take place at the office of Plaintiff's attorneys, Center For Justice, during regular business hours until completed, not later than thirty (30) days from date of service of these requests. Visual inspection may be made by Plaintiff or Plaintiff's attorneys, and copying shall be done by photocopying or other appropriate means.

DEFINITIONS

1. When used in reference to a natural person, "identify" or "identity" means to state such person's full name, present or last known address and telephone number, and present or last known employer.

2. When used in reference to an entity or organization other than a natural person, "identify" or "identity" means to state its full name, its principal business address, and the nature of the entity or organization (e.g., corporation, partnership, etc.).

3. When used in reference to a document or public record, "identify" or "identity" means to set forth the date of its creation and any subsequent revisions or amendments, its author or authors, the designated and actual recipients, the type of document or public record (e.g., letter, memorandum, notes, etc.), and the identity of its present or last known custodian. Documents or public records to be identified shall also include documents or public records with respect to which a privilege may or is to be claimed.

4. The term "identify" when used in connection with communications means to describe each communication by stating:

- (a) When and where it was made;
- (b) Whether it was written or oral;
- (c) The identity of each of the makers and recipients thereof, in addition to all other persons, if any, present;
- (d) The medium of the communication;
- (e) Its substance.

Communications to be identified shall include any communication as to which any privilege is or may be claimed.

5. The term "identify" when used in connection with a meeting, means to describe each meeting by stating:

- (a) Where and when it was held;
- (b) The identity of each of the participants, in addition to all other persons present;
- (c) The substance of what took place at each such meeting.

6. "Document" as used herein incorporates by reference the definition of "writing" set forth in RCW 42.17.020(42) and also includes every tangible thing upon which is recorded, marked or impressed, any form of communication or representation, such as words, letters, pictures, sounds, symbols, or combinations thereof, including any tangible thing marked or impressed with any handwriting, typewriting, printing, photostatting, photographing, transcribing, videotaping, or audiotaping. "Document" as used herein also means and includes drafts, originals, and all copies, including all annotated copies, however produced or reproduced, and in the possession, custody or control of the Defendant or any of Defendant's attorneys or other agents or representatives. Further, if any document was, but no longer is in your possession or subject to your control, state what disposition was made of it.

7. The term "public record" carries the meaning set forth in RCW 42.17.020(36).

8. The term "County" refers to Defendant, County of Spokane.

9. The term "NASC" refers to the Plaintiff, Neighborhood Alliance of Spokane County.

10. The term "employee" refers to any current or former County employee or intern, whether paid or voluntary, full-time or part-time, permanent or temporary.

11. The term "official" refers to any current or former County official, elected or appointed.

12. The term "Act" refers to the Public Records Act, RCW 42.17.250 et seq.

13. The term "index" refers to any document or public record constituting an index, tabulation, summary, or listing of other documents or public records.

1 COURT RULES REQUIRE THE ANSWERS TO BE PRECEDED BY THE
2 QUESTIONS AND THUS EXTRA COPIES OF THESE INTERROGATORIES AND
3 REQUESTS ARE BEING SERVED UPON YOU IN ORDER TO EXPEDITE THE
4 ANSWERING THEREOF. YOU MAY TYPE YOUR ANSWERS IMMEDIATELY AFTER
5 THE QUESTION AND THUS AVOID RETYPING THE QUESTION.

6 THESE INTERROGATORIES AND REQUESTS ARE CONTINUING IN NATURE,
7 AND PLAINTIFF HEREBY DEMANDS THAT ANY INFORMATION COMING INTO THE
8 POSSESSION OF YOU OR YOUR ATTORNEY THAT WOULD CHANGE THE ANSWERS
9 IN ANY WAY BE PROMPTLY FURNISHED TO PLAINTIFF'S COUNSEL, IN ANY
10 EVENT NO LATER THAN 30 DAYS AFTER RECEIPT OF SUCH INFORMATION.

11 DATED this ____ day of JUNE, 2006.

12 BREEAN BEGGS, WSBA #20795
13 Attorney for the Plaintiffs
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PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR
PRODUCTION- 4

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

178

1
2 INTERROGATORIES

3 INTERROGATORY NO.1: Please identify each person providing answers to these
4 Interrogatories and Requests for Production.

5 ANSWER:
6

7 INTERROGATORY NO. 2: Please identify any documents or public records containing
8 (a) any rules, regulations, or policies adopted, promulgated, revised, or amended by the County
9 pursuant to RCW 42.17.290; (b) any index maintained by the County pursuant to RCW
10 42.17.260(3); and/or (c) any order issued by the County pursuant to RCW 42.17.260(4)(a).

11 ANSWER:
12

13 INTERROGATORY NO. 3: To any extent not covered by your answer to Interrogatory
14 No. 2, please describe any policies, practices, and/or procedures of the County, written or
15 unwritten, formal or informal, for responding to requests under the Act to inspect or copy public
16 records, from 2001 to present, including but not limited to (a) whether the County designates or
17 designated a particular person or persons to coordinate responses to such requests, and if so,
18 please identify such person or persons; (b) whether the County has followed or used different
19 policies, practices, and/or procedures in responding to different requests under the Act; and (c)
20 whether County personnel have received any training or education concerning the Act, and if so,
21 please specify the date and substance of such training and education.

22 ANSWER:
23

24 INTERROGATORY NO. 4: Please identify any officials or employees who were
25 responsible for receiving public records requests for the County Building and Planning
Department from January 1, 2005 to November 1, 2005.

ANSWER:
26

27 INTERROGATORY NO. 5: Please identify any officials or employees who were
28 responsible for determining whether documents constituted public records for the County
29 Building and Planning Department from January 1, 2005 to November 1, 2005.

1 ANSWER:

2
3 INTERROGATORY NO. 6: Please identify the training and experience for each of the
4 people listed in Interrogatory No. 5.

5 ANSWER:

6
7 INTERROGATORY NO. 7: Please identify any and all officials or employees who were
8 involved in or responsible for responding to NASC's May 16th request for public records.

9 ANSWER:

10
11 INTERROGATORY NO. 8: Please identify any and all communications or meetings
12 between County officers or employees, or between any County officer and employee and any
13 other person, concerning Plaintiff's requests to inspect or copy public records relating to the
14 hiring practices or seating charts of the County Building and Planning Department or any
15 communications between Plaintiff and the County concerning the above identified public
16 records, including but not limited to communications or meetings (a) concerning the withholding
17 of any such records from Plaintiff; (b) concerning any efforts to locate or obtain such records; (c)
18 concerning any efforts to collate, organize, index, or tabulate such records; or (d) occurring
19 between any County officer or employee and any person not employed by the County.

20 ANSWER:

21
22 INTERROGATORY NO. 9: Please identify all County officials and employees who
23 have generated or received any documents or public records related to the job posting,
24 recruitment, selection process, and hiring practices of the county for the Building and Planning
25 Department from December 1, 2004 to the present.

26 ANSWER:

27 INTERROGATORY NO. 10: Please identify all County officials and employees who
28 have generated or received any documents or public records related to determining the terms,
29 criteria, and/or process for assessing employee applicant qualifications for the positions of
30 development assistance coordinators (of any grade) and codes administrator from December 1,
31 2004 to the present.

32 PLAINTIFF'S FIRST SET OF
33 INTERROGATORIES AND REQUESTS FOR
34 PRODUCTION- 6

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

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1
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3 ANSWER:
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5 INTERROGATORY NO. 11: Please identify all County officials and employees
6 responsible for making hiring decisions within the County Building and Planning Department
7 from December 1, 2004 to the present and provide information as to their respective positions
8 within the department.
9

10 ANSWER:
11

12 INTERROGATORY NO. 12: Please identify all County officials and employees who
13 have generated or received any documents or public records relating to current or proposed
14 office space assignments for County Building and Planning Department officials and employees
15 from January 1, 2005 to the present.
16

17 ANSWER:
18

19 INTERROGATORY NO. 13: Please identify the number of people who applied for the
20 positions of Development Assistance Coordinator 1 and Development Assistance Coordinator 2
21 from January 1, 2005 to the present.
22

23 ANSWER:
24

25 INTERROGATORY NO. 14: Please provide information as to the relative experience
and education of each of the people who applied for the positions of Development Assistance
Coordinator 1 and Development Assistance Coordinator 2 from January 1, 2005 to the present.
26

27 ANSWER:
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1 INTERROGATORY NO. 15: Please identify the original computer on which the undated
2 county planning division seating chart, containing "Ron" and "Steve" sitting next to each other,
3 provided by Ms. Knutsen to NASC on May 13th was created, its current location and custodian,
4 and the date it was placed into service by Spokane County.

5 ANSWER:

6 INTERROGATORY NO. 16: Please identify the manner in which the undated county
7 planning division seating chart referenced in No. 15 was originally saved and the location it was
8 saved to (e.g., hard drive, disk, network drive).

9 ANSWER:

10 INTERROGATORY NO. 17: Please state any County policy, practice, or procedure,
11 formal or informal, written or unwritten, from 2000 to present, with respect to computer data
12 management and retention, including but not limited to (a) procedures for backing up any data
13 stored on hard drives, disks, or network servers; (b) whether and under what circumstances any
14 files or data stored on hard drives, network servers, or backup storage media may be deleted,
15 erased, reformatted, or overwritten; (c) how any such policy, practice, or procedure was initiated,
16 revised, and communicated to County personnel; and (d) whether any County official or
17 employee has ever made a "mirror image" of the hard drive of any other County official or
18 employee, and if so, for what purpose and whether such "mirror image" is available for
19 inspection and review.

20 ANSWER:

21 INTERROGATORY NO. 18: Please list any and all modifications made to Pam
22 Knutsen's computer from February 2005 to the present. These modifications include, but are not
23 limited to, maintenance repair, transfers of information saved on the hard drive to another system
24 or database, physical location of the computer, primary user of the computer, etc. Please list the
25 date that each respective modification was made.

ANSWER:

1 INTERROGATORY NO. 19: Please list any and all modifications made to all computers
2 of employees of the County Building and Planning Division from February 2005 to the present.
3 These modifications include, but are not limited to, maintenance repair, transfers of information
4 saved on the hard drive to another system or database, physical location of the computer, primary
5 user of the computer, etc.

6
7 ANSWER:

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10 INTERROGATORY NO. 20: Please identify any and all people involved in deciding to
11 replace Pam Knutsen's computer in April 2005 and their reasons for being involved.

12
13 ANSWER:

14
15 INTERROGATORY NO. 21: Please identify the computer and/or network from which
16 the log detailing the name, folder, date modified, date created, and date accessed provided to
17 NASC in response to its May 16th request was taken.

18
19 ANSWER:

20
21 INTERROGATORY NO. 22: Please identify which document on the log identified in
22 No. 19 corresponds to the undated seating chart identified in No. 15.

23
24 ANSWER:

25
26 INTERROGATORY NO. 23: Please identify the full names and job title of each
27 employee listed on the undated seating chart identified in No. 15 as well as their relationship to
28 County Commissioner, Phil Harris.

29
30 ANSWER:

31
32 INTERROGATORY NO. 24: Please identify the date on which the seating chart
33 described in interrogatory No. 15 provided by Ms. Knutsen to NASC on May 13th was originally
34 created and whom it was created by.

1 ANSWER:

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3
4 INTERROGATORY NO. 25: Please provide the date that Ms. Knutsen was promoted to
her current position and the name of her current position.

5 ANSWER:

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7
8 INTERROGATORY NO. 26: Please describe the hiring and selection process for Ms.
Knutsen's current position, whether or not the position was advertised internally and/or
externally and how many other people applied for and were considered for the position.

9
10 ANSWER:

11
12 INTERROGATORY NO. 27: Please provide the hiring date for Demeris Skaggs for her
current position and the name of her current position.

13 ANSWER:

14
15
16 INTERROGATORY NO. 28: Please describe the selection process for Ms. Skagg's
current position, whether or not the position was advertised internally and/or externally and how
many other people applied for and were considered for the position.

17
18 ANSWER:

19
20 INTERROGATORY NO. 29: Please provide the date that Erik Skaggs was hired into his
current position and the name or his current position.

21 ANSWER:

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24 INTERROGATORY NO. 30: Please describe the selection process for Mr. Skagg's
current position, whether or not the position was advertised internally and/or externally and how
many other people applied for and were considered for the position.

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ANSWER:

ANSWER:

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3 REQUEST FOR PRODUCTION NO. 6: Please produce copies of any document
4 containing any policy, practice, or procedure referred to in your answer to Interrogatory No. 17.

5 REQUESTS FOR PRODUCTION NO. 7: Please produce the maintenance records of all
6 computers in the County Building and Planning Department for the past three years.

7 REQUESTS FOR PRODUCTION NO. 8: Please produce all records and
8 communications regarding any maintenance or changes to Pam Knutsen's computer from
9 January 1, 2005 to the present.

10 REQUESTS FOR PRODUCTION NO. 9: Please produce all records and
11 communications documenting the budget proposal and promotion process for Pam Knutsen's
12 current position.

13 REQUESTS FOR PRODUCTION NO. 10: Please produce all records and
14 communications regarding the application and hiring process for Demeris Skaggs.

15 REQUESTS FOR PRODUCTION NO. 11: Please produce all records and
16 communications regarding the application and hiring process for Erik Skaggs.

17 REQUESTS FOR PRODUCTION NO. 12: Please produce all records and
18 communications regarding the application and hiring process for Martha Lou Wheatley-Billeter.

19 REQUESTS FOR PRODUCTION NO. 13: Please produce all records and
20 communications regarding the application and hiring process for Ron Hand in his current
21 position.

22 REQUESTS FOR PRODUCTION NO. 14: Please produce all records and
23 communications regarding the application and hiring process for Steve Harris in 2005, including
24 but not limited to the resumes and applications of all people interviewed for the position.
25

REQUESTS FOR PRODUCTION NO. 15: Please produce all requests for administrative interpretations and all administrative interpretations provided by the Building and Planning Department from April 1, 2003 through the present.

REQUESTS FOR PRODUCTION NO. 16: Please produce the first five documents that contain the name "Steve Harris" or "Stephen Harris" that were created between May 3, 2005 and May 16, 2005.

REQUESTS FOR PRODUCTION NO. 17: Please produce the first five documents that contain the name “Ron Hand” that were created between May 3, 2005 and May 16, 2005.

REQUESTS FOR PRODUCTION NO. 18: Please produce the first five documents that contain the name “Steve Davenport” that were created between May 3, 2005 and May 16, 2005.

STATE OF WASHINGTON)
) ss.
County of Spokane)

_____, being first duly sworn upon oath, deposes and says:

That I am an agent or officer of the County of Spokane authorized to respond to these Interrogatories; that I have read the foregoing Interrogatories and the answers thereto, know the contents thereof, and believe the same to be true.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2006.

(Name)

NOTARY PUBLIC in and for
the State of Washington,
residing at Spokane County
My Commission expires: _____

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR
PRODUCTION- 13**

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

1 The undersigned attorney for the County of Spokane has read the foregoing answers and
2 signs this response in compliance with CR 26(g).

3
4
5 Attorney's Name & Bar #
6 Address
7 Telephone #:
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PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR
PRODUCTION- 14

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

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SEP -7 2007

IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LINCOLN

NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, a non-profit
corporation,

Plaintiff,

vs.

COUNTY OF SPOKANE, a political
subdivision of the State of Washington,

Defendant.

Case No.: 06-2-00107-0

PLAINTIFF'S DEPOSITION BY
WRITTEN QUESTIONS TO SPOKANE
COUNTY'S DESIGNEE

TO: COUNTY OF SPOKANE:

Pursuant to CR 31, Plaintiff Neighborhood Alliance of Spokane County, through the undersigned attorney of record, propounds the following written questions to Spokane County's designee on the 12th day of October, 2007, to be directed to the designee by the court reporter before whom the deposition will be taken, as specified in the attached notice of deposition. The questions shall be answered separately and fully under oath and recorded by the court reporter as provided in CR 30(c).

In answering these questions you are required to furnish such information as is available to you, not merely the information which you know of your personal knowledge. This is

PLAINTIFF'S DEPOSITION QUESTIONS TO
SPOKANE COUNTY - 1

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

1 intended to include any information in the possession of the agent or attorney or any investigator
2 for the answering party. These questions shall be continuing in nature, and you are required to
3 serve and file amended answers to questions promptly upon any additional information being
4 secured by you which would make the answers initially given incorrect or misleading.


5 6 DEFINITIONS

- 7
- 8 1. When used in reference to a natural person, "identify" or "identity" means to
9 state such person's full name, present or last known address and telephone
10 number, and present or last known employer.
 - 11 2. When used in reference to an entity or organization other than a natural person,
12 "identify" or "identity" means to state its full name, its principal business
13 address, and the nature of the entity or organization (e.g., corporation,
14 partnership, etc.).
 - 15 3. When used in reference to a document or public record, "identify" or "identity"
16 means to set forth the date of its creation and any subsequent revisions or
17 amendments, its author or authors, the designated and actual recipients, the
18 type of document or public record (e.g., letter, memorandum, notes, etc.), and
19 the identity of its present or last known custodian. Documents or public
20 records to be identified shall also include documents or public records with
21 respect to which a privilege may or is to be claimed.
 - 22 4. The term "identify" when used in connection with communications means to
23 describe each communication by stating:
 - 24 (a) When and where it was made;
 - 25 (b) Whether it was written or oral;
 - (c) The identity of each of the makers and recipients thereof, in addition to
all other persons, if any, present;
 - (d) The medium of the communication;
 - (e) Its substance.
 5. Communications to be identified shall include any communication as to which
any privilege is or may be claimed.
 6. The term "identify" when used in connection with a meeting, means to
describe each meeting by stating:
 - (a) Where and when it was held;

- 1 (b) The identity of each of the participants, in addition to all other persons
2 present;
3 (c) The substance of what took place at each such meeting.

- 4 7. "Document" as used herein incorporates by reference the definition of "writing"
5 set forth in RCW 42.17.020(42) and also includes every tangible thing upon
6 which is recorded, marked or impressed, any form of communication or
7 representation, such as words, letters, pictures, sounds, symbols, or combinations
8 thereof, including any tangible thing marked or impressed with any handwriting,
9 typewriting, printing, photostating, photographing, transcribing, videotaping, or
10 audio taping. "Document" as used herein also means and includes drafts,
11 originals, and all copies, including all annotated copies, however produced or
12 reproduced, and in the possession, custody or control of the Defendant or any of
13 Defendant's attorneys or other agents or representatives. Further, if any
14 document was, but no longer is in your possession or subject to your control, state
15 what disposition was made of it.
16 8. The term "public record" carries the meaning set forth in RCW 42.17.020(36).
17 9. The term "County" refers to Defendant, County of Spokane.
18 10. The term "NASC" refers to the Plaintiff, Neighborhood Alliance of Spokane
19 County.
20 11. The term "employee" refers to any current or former County employee or
21 intern, whether paid or voluntary, full-time or part-time, permanent or
22 temporary.
23 12. The term "official" refers to any current or former County official, elected or
24 appointed.
25 13. The term "Act" refers to the Public Records Act, RCW 42.17.250 et seq.
14. The term "index" refers to any document or public record constituting an
index, tabulation, summary, or listing of other documents or public records.

DATED this 7 day of September, 2007.


BREEAN BEGGS, WSBA #20795
Attorney for the Plaintiff

1
2 QUESTIONS

3 QUESTION 1. Attached as Exhibit 1 to this deposition is a copy of the undated seating chart
4 provided by Pam Knutsen to Bonnie Mager on or about May 13, 2005, referenced in Pam
5 Knutsen's affidavit at paragraph 5 and the May 16th records request that was attached as
6 Exhibit A to said affidavit (See Exhibit 2 to this deposition). Please confirm that this is an
accurate copy of the seating chart that Ms. Knutsen provided to the Neighborhood Alliance
on or about May 13, 2005.

7 ANSWER:
8

9 QUESTION 2. Please confirm that this seating chart existed on Pam Knutsen's "PC" prior to
10 April 26, 2005.

11 ANSWER:
12

13 QUESTION 3. Please confirm that a copy of this seating chart was transferred to Ms.
14 Knutsen's new PC on or about April 26-27 as described in the Affidavit of Bill Fiedler at
paragraph 4. (See Exhibit 3).

15 ANSWER:
16
17

18 QUESTION 4. Is there any reason to believe that the electronic version of the seating chart
19 referenced in the previous three questions (Exhibit 1 to this deposition) was ever stored on
any computer or computer network other than Ms. Knutsen's old "PC" and her replacement
"PC"?
20

21 ANSWER:
22

23 QUESTION 5. If the answer was yes to the previous question, please describe the basis for
24 this belief and give a description of the computer, computer network or operator of the
computer that held a version of the seating chart.

25 ANSWER:

1 QUESTION 6. Please describe any security measures that Ms. Knutsen's old PC had at
2 anytime in 2005 that would have limited access to records (e.g. Exhibit 1) stored on Pam
3 Knutssen's "PC" to individuals other than Pam Knutsen.

4 ANSWER:

5
6 QUESTION 7. Is there any reason to believe that any person other than Pam Knutsen either
7 created and/or accessed the seating chart at Exhibit 1 to this deposition on Pam Knutsen's old
8 "PC" prior to its replacement?

9 ANSWER:

10 QUESTION 8. If the answer was yes to the previous question, please describe the basis for
11 that belief and give a name or description of the person that you reasonably believe may have
12 created and/or accessed the seating chart, including the date and circumstances of access.

13 ANSWER:

14
15 QUESTION 9. Please identify the date that the data on Pam Knutsen's "old PC" was wiped
16 off its hard drive as described in the Affidavit of Bill Fiedler at paragraph 6 (Exhibit 3).

17 ANSWER:

18 QUESTION 10. Please identify the person who performed the data wipe as described in the
19 previous question.

20 ANSWER:

21
22 QUESTION 11. Please identify any written or electronic record that would document the
23 date of the data wipe of Ms. Knutsen's old "PC" and any information that would lead to
24 believe that the data wipe was completed prior to the County receiving the May 16th records
25 request attached as Exhibit A to the affidavit of Pam Knutsen (Exhibit 2).

ANSWER:

1
2 QUESTION 12. Please describe any and all efforts made by County employees to confirm
3 whether or not Pam Knutsen's old "PC" retained any record of the seating chart at Exhibit 1
4 to this deposition.

5
6 ANSWER:

7 QUESTION 13. If any such efforts were made, please state the name of the person(s) who
8 made them, the date(s) made and the identities and custodians of any records that
9 documented those efforts.

10
11 ANSWER:

12 QUESTION 14. In reference to the October 22, 2005 Spokesman Review article at Exhibit 4
13 to this deposition, the story reads, "When asked this week about the chart, Knutsen said one
14 of the Steves it referenced is Steve Davenport, a longtime County planner." Did the article
15 accurately attribute Pam Knutsen's statement to them that one of the Steves on the seating
16 chart was Steve Davenport?

17
18 ANSWER:

19
20 QUESTION 15. If not, please describe any inaccuracies regarding this statement and what
21 the correct attribution should have been.

22
23 ANSWER:

24 QUESTION 16. Is it true that one of the Steves on the seating chart at Exhibit 1 to this
25 deposition was a Spokane County employee in May of 2005 with the name, Steve
Davenport?

ANSWER:

QUESTION 17. If not, please explain why not.

ANSWER:

1
2
3 QUESTION 18. Is it true that the numbers "7221" immediately following Steve Davenport's
4 name on the seating chart are identical to his telephone extension?

5 ANSWER:
6

7 QUESTION 19. If not, please explain why not.
8

9 ANSWER:
10

11 QUESTION 20. Is it also true that the second office space on the seating chart that includes
12 the name "Steve" does not contain the numbers "7221"?
13

14 ANSWER:
15

16 QUESTION 21. If not, please explain why not.
17

18 ANSWER:
19

20 QUESTION 22. Is it true that Exhibit 5 to this deposition contains the cover page for the
21 2003 Spokane County employee telephone directory as well as a page listing Steve
22 Davenport at extension 7221?
23

24 ANSWER:
25

QUESTION 23. If not, please explain why not.
22

23 ANSWER:
24

25 QUESTION 24. Please describe any efforts made by County employees/agents to locate and
provide any records to the Plaintiff that would have included Steve Davenport's name such
that he could have been identified on the seating chart at Exhibit 1.

1 ANSWER:

2
3
4 QUESTION 25. Is it true that providing a copy of Exhibit 5 to this deposition would have
5 been responsive to the Neighborhood Alliance's May 16, 2005 request for records (Exhibit 2
6 to this deposition) "that record the following information . . . Also, the identity of the
7 individual listed as 'Steve' in the cubicle with the number 7221 at the top of the chart."?

8 ANSWER:

9 QUESTION 26. If not, please explain why not.

10 ANSWER:

11
12 QUESTION 27. Is it true that as of May 16, 2005, Spokane County had in its possession
13 non-exempt records that contained the name "Steve Davenport" in them (e.g. memoranda,
14 emails, letters, directories, etc.)?

15 ANSWER:

16 QUESTION 28. If not, please explain why not.

17 ANSWER:

18
19 QUESTION 29. In reference to the October 22, 2005 Spokesman Review article at Exhibit 4
20 to this deposition, the story reads, "Another name on the seating chart in question, 'Ron,' did
21 refer to a real person who was not working for the county at that time but was hired later.
22 Ron Hand was laid off when Spokane Valley Incorporated and the county cut back on
23 building and planning staff. His position was posted, and he was hired after the chart was
24 created." Did the article accurately attribute Pam Knutsen's statement to them that the "Ron"
25 on the seating chart was Ron Hand?

24 ANSWER:

1 QUESTION 30. If not, please describe any inaccuracies regarding this statement and what
2 the correct attribution should have been.

3 ANSWER:

4
5 QUESTION 31. Is it true that "Ron" on the seating chart at Exhibit 1 to this deposition was
6 Ron Hand and that he was employed by Spokane County prior to May of 2005?

7 ANSWER:

8 QUESTION 32. If not, please explain why not.

9 ANSWER:

10
11 QUESTION 33. Is it true that Ron Hand was employed by Spokane County as an Assistant
12 Development Coordinator during April of 2005?

13 ANSWER:

14
15 QUESTION 34. If not, please explain why not.

16 ANSWER:

17
18 QUESTION 35. Is it true that Exhibit 6 to this deposition contains the cover page for the
19 2000 Spokane County employee telephone directory as well as a page listing Ron Hand at
20 477-7235?

21 ANSWER:

22
23 QUESTION 36. If not, please explain why not.

24 ANSWER:

1 QUESTION 37. Please describe any efforts made by County employees/agents to locate and
2 provide any records to the Plaintiff that would have included Ron Hand's name such that he
3 could have been identified on the seating chart at Exhibit 1.

4 ANSWER:
5
6

7 QUESTION 38. Is it true that providing a copy of Exhibit 6 to this deposition would have
8 been responsive to the Neighborhood Alliance's May 16, 2005 request for records (Exhibit 2
9 to this deposition) "that record the following information . . . The identities of 'Ron & Steve',
10 individuals who are situated near the center of the seating chart referenced in Exhibit 1"?

11 ANSWER:
12

13 QUESTION 39. If not, please explain why not.
14

15 ANSWER:
16

17 QUESTION 40. Is it true that as of May 16, 2005, Spokane County had in its possession
18 non-exempt records that contained the name "Ron Hand" in them (e.g. memoranda, emails,
19 letters, directories, etc.)?

20 ANSWER:
21

22 QUESTION 41. If not, please explain why not?
23

24 ANSWER:
25

26 QUESTION 42. Is it true that Steve Harris was employed by Spokane County as an
27 Assistant Development Coordinator during April of 2005?

28 ANSWER:
29

30 QUESTION 43. If not, please explain why not.

1 ANSWER:

2
3 QUESTION 44. Is it true that "Steve" on the seating chart at Exhibit 1 to this deposition was
4 Steve Harris?

5 ANSWER:

6
7 QUESTION 45. If not, please explain why not.

8 ANSWER:

9
10 QUESTION 46. Is it true that as of May 16, 2005, Spokane County had in its possession
11 non-exempt records that contained the name "Steve Harris" in them (e.g. memoranda, emails,
12 letters, directories, etc.)?

13 ANSWER:

14
15 QUESTION 47. If not, please explain why not.

16 ANSWER:

17 QUESTION 48. Please describe any efforts made by County employees/agents to locate and
18 provide any records to the Plaintiff that would have included Steve Harris's name such that
19 he could have been identified on the seating chart at Exhibit 1.

20 ANSWER:

21
22 QUESTION 49. Is it true that providing a copy of at least one record responsive to the
23 previous question would have been responsive to the Neighborhood Alliance's May 16, 2005
24 request for records (Exhibit 2 to this deposition) "that record the following information . . .
25 The identities of 'Ron & Steve', individuals who are situated near the center of the seating
 chart referenced in Exhibit 1"?

ANSWER:

PLAINTIFF'S DEPOSITION QUESTIONS TO
SPOKANE COUNTY - 11

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

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QUESTION 50. If not, please explain why not.

ANSWER:

QUESTION 51. If it is contended that the "Steve" on the seating chart at Exhibit 1 to this deposition was someone other than Steve Harris, please identify that person, and/or why it could not have been Steve Harris.

ANSWER:

QUESTION 52. Please describe any efforts made by Spokane County to clarify what records that Plaintiff was seeking in its May 16, 2005 records request.

ANSWER:

QUESTION 53. What is your full name, job title and relationship with Spokane County?

ANSWER:

1 STATE OF WASHINGTON)
2 County of Spokane) ss.
3)

4 _____, being first duly sworn upon oath, deposes and says:

5 That I am an agent or officer of the County of Spokane authorized to respond to these
6 questions; that I have read the foregoing questions and answers thereto, know the contents
7 thereof, and believe the same to be true.

8 _____
9
10 SUBSCRIBED AND SWORN TO before me this _____ day of
11 _____, 2007.

12
13 (Name) _____

14 NOTARY PUBLIC in and for
15 the State of Washington,
16 residing at Spokane County
17 My Commission expires: _____
18
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25

PLAINTIFF'S DEPOSITION QUESTIONS TO
SPOKANE COUNTY - 13

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

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CERTIFICATE OF SERVICE

The undersigned hereby certified under penalty of perjury under the laws of the State of Washington that on September 7, 2007, I caused a true and correct copy of the foregoing document to be served on the following counsel at the addresses shown below in the manner indicated:

Patrick Risken
Attorney for Defendants
Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910

VIA REGULAR MAIL ☐
VIA CERTIFIED MAIL ☐
HAND DELIVERED ☒
BY FACSIMILE ☐
VIA FEDERAL EXPRESS ☐

DATED at Spokane, Washington, this 7 day of September, 2007.


Susan McWhirter, Paralegal

**IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON**

IN AND FOR THE COUNTY OF LINCOLN

NEIGHBORHOOD ALLIANCE

OF SPOKANE COUNTY)

PLAINTIFF)

VS)

COUNTY OF SPOKANE)

DEFENDANT)

APPEAL NO. 271846

CLERK'S CERTIFICATE OF
CLERK'S PAPERSLINCOLN COUNTY CAUSE
NO. 06-2-00107-0

* * * * *

STATE OF WASHINGTON)

COUNTY OF LINCOLN)

ss.

I, PEGGY A. SEMPRIMOZNIK, EX-OFFICIO CLERK OF THE LINCOLN COUNTY SUPERIOR COURT, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF SO MUCH OF THE CLERK'S PAPERS IN THE ABOVE ENTITLED CAUSE AS I HAVE BEEN DIRECTED BY THE APPELLANT TO TRANSMIT TO THE COURT OF APPEALS, DIVISION III. WITNESS, MY HAND AND THE SEAL OF SAID SUPERIOR COURT AFFIXED AT DAVENPORT, WASHINGTON THIS 24TH DAY OF JUNE, 2008.

PEGGY A. SEMPRIMOZNIK, CLERK

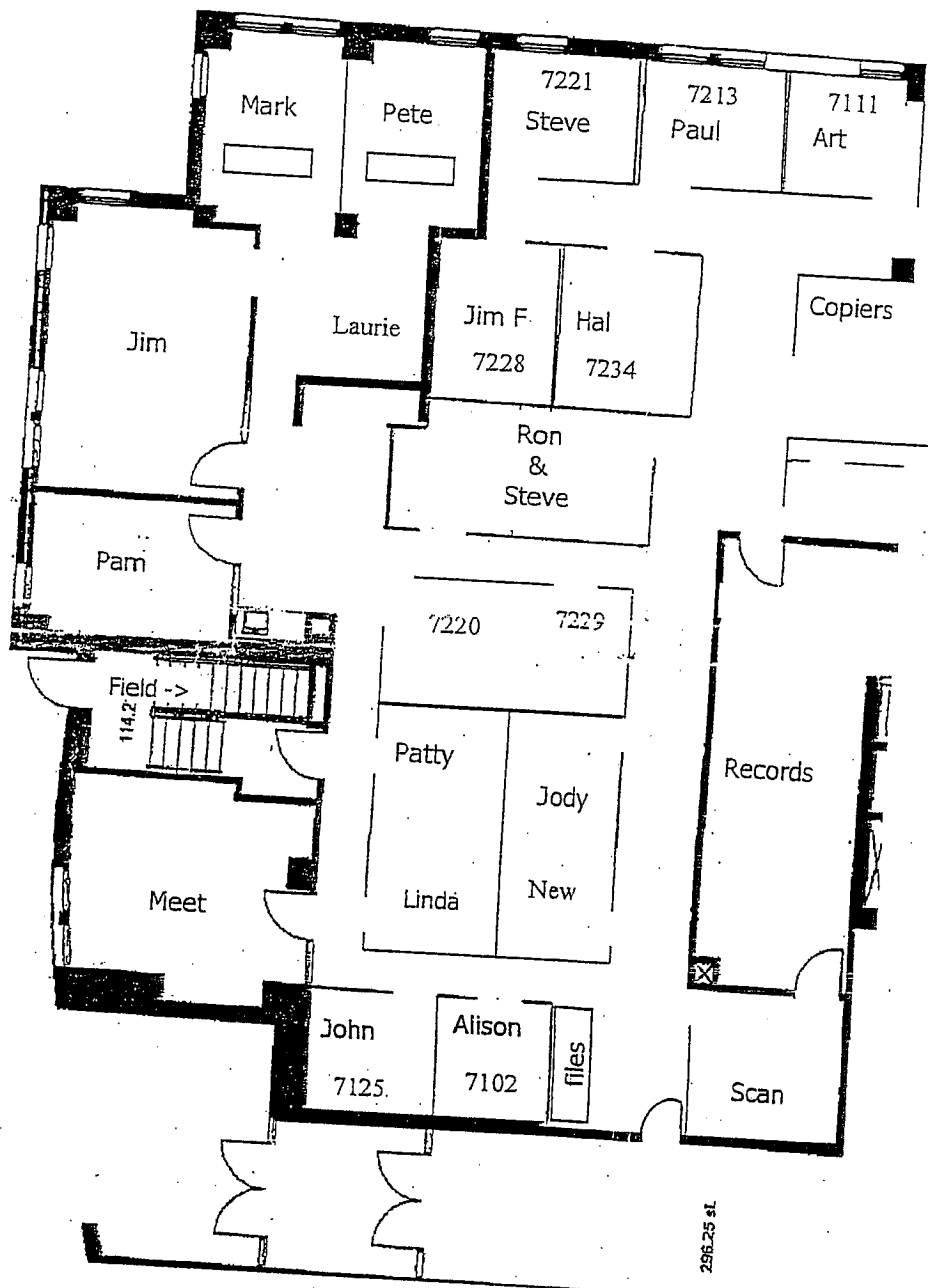
PEGGY A. SEMPRIMOZNIK, CLERK AND
EX-OFFICIO CLERK OF SUPERIOR COURT
LINCOLN COUNTY, DAVENPORT WA

BY

Dana Rybuen

DEPUTY CLERK

EXHIBIT 1



NOTE:
KM Downstairs
Chuck Downstairs
Bruce Upstairs
GIST2 Upstairs

EXHIBIT 2

Neighborhood Alliance of Spokane
35 W. Main, Suite 370, Spokane WA 99201
(509) 232-2772 www.neighborhood-alliance.org

May 16, 2005

Ms. Kathy Malzahn
1026 W. Broadway
Spokane, WA 99260

Dear Ms. Malzahn:

On behalf of the Neighborhood Alliance of Spokane County I am making the following request for public records:

Pursuant to the state public records act (RCW 42.17) I am writing to request the opportunity to review public records created, received and/or retained by Pam Knutsen or any other county official or employee, that record the following information:

- 1) The complete electronic file information logs for the undated county planning division seating chart provided by Ms. Knutsen to the Neighborhood Alliance on May 13th. This information should include, but not necessarily be limited to, the information in the "date created" data field for the document as it exists on the specific Microsoft Publisher electronic document file created for the referenced seating chart. The requested information should also include, but not be limited to, the computer operating system(s) data record indicating the date of creation and dates of modification for the referenced seating chart document.
- 2) The identities of "Ron & Steve" individuals who are situated near the center of the seating chart referenced in item #1. Also, the identity of the individual listed as "Steve" in the cubicle with the number 7221 at the top of the chart.

By the term public records, I am invoking a broad definition, consistent with RCW 42.17.020(36) and specifically mean to include records that exist in any electronic form as well as those that exist on paper. This should be read to include, but not be limited to, records preserved in paper correspondence, electronic mail, facsimiles, videotape, and computer files.

RECEIVED

MAY 18 2005

HUMAN RESOURCES DEPT

EXHIBIT NO. A

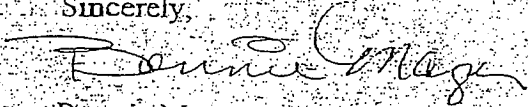
RECEIVED

OCT 11 2005

SPOKANE COUNTY
PROSECUTING ATTORNEY
CIVIL DIVISION

Pursuant to RCW 42.17.310, please identify any record covered by the above requests that is being withheld as exempt, and provide a summary of the record's content and the specific reason for the exemption.

Sincerely,



Bonnie Mager
Coordinator

cc: cc: Mark Holman, John Pederson, Laurie Carver, Terry Hontz, Marshall Farnell, Jim Ernacio, Ron Cole, Gerry Gimmell, Steve Davenport, Paul Jensen, Hal Allert, Bruce Hunt, Jim Falk, Terry Liberty, Tammy Jones, Bill Moser, Jim Millgard, John Nummery, Kathy Sanders, Robin Burris, Julie Shatto, Dan Howard, Jody Fisher, Terrie Bidowski, Linda Lemley, Faith Hintz, Diane Truax, Demeris Skaggs, Linda Phillips, Patty Poole, Ken Jeffrey, Tom Postlewaite, Brenda Sims, Bruce Rawls, Ian VonEssen, Bea Lackoff, Kevin Cooke, Ross Kelley, Amie Swenson, Scott Engelhardt, James Manson, Pam Knutsen

EXHIBIT 3

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF LINCOLN

10 NEIGHBORHOOD ALLIANCE OF
11 SPOKANE COUNTY, a non-profit
12 corporation,

13 Plaintiff,

14 vs.

15 COUNTY OF SPOKANE, a political
16 subdivision of the State of Washington,

17 Defendants.
18

No. 06-2-00107-0

AFFIDAVIT OF BILL FIEDLER

19
20 STATE OF WASHINGTON)

21 County of Spokane)

ss:

22 BILL FIEDLER, being first duly sworn upon oath, deposes and says:
23

24 1. I am, and at all times relevant hereto was, over the age of 18 years and a
25 resident of Spokane County, Washington. I make this Affidavit of my own personal
26 knowledge.

27 2. I am the Director of the Information Systems Department (ISD) for Spokane
28 County, and held that position at all times relevant herein.

29 3. In April 2005, Pam Knutsen's office computer ("PC") in the Building and
30

AFFIDAVIT OF BILL FIEDLER - 1

Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

408

1 Planning Department was due for either rebuilding or replacement. That rebuilding/
2 replacement function is a normal day-to-day activity performed throughout the year by
3 Spokane County ISD, for all the various departments of the County of Spokane.

4 4. When performing the rebuild of a new PC or new hard drive for a PC, ISD does
5 this work in its own office. ISD personnel build up a new PC for replacement and then copy all
6 user documents that are on the hard drive of the PC being replaced over to the new PC. When
7 that copying takes place, all documents are given a new "Date Created." Once all documents are
8 copied, the new PC is delivered to the County employee. This was the procedure followed with
9 regard to Pam Knutsen's office PC in April 2005.

10 5. Data stored on local PCs Hard Drives, such as Ms. Knutsen's, are not "backed
11 up." That is, local PC Hard Drives such as Ms. Knutsen's are not backed up through the County
12 network. Therefore, the only information contained in that particular computer's Hard Drive
13 would be found on its hard drive. This status of "local PC Hard Drives" as not backed-up to the
14 County computer network is quite common.

15 6. ISD then takes the old PC and hard drive back to its office. Using a software tool
16 called "Wipe Drive" (wipedrv.exe), all data is wiped off the old hard drive. Wipe Drive is a
17 software tool that conforms to U.S. Department of Defense standards for ensuring that data on a
18 wiped drive is unrecoverable. That is necessary since some old hard drives are auctioned as
19 surplus parts. If an "unwiped" hard drive were sold, confidentiality would be breached.
20 Likewise, even hard drives that are rebuilt and put back into service in Spokane County offices
21 are "wiped", since "unwiped" hard drives might contain information which is confidential or
22 irrelevant to the new user's work or tasks. This is a standard practice of the County of Spokane
23 ISD, Spokane County uses this process on all rebuilt computers and this process was followed
24 with regard to Ms. Knutsen's PC in April 2005.

25 //

26 //

27 //

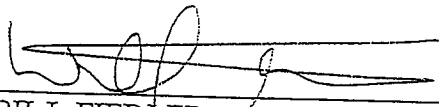
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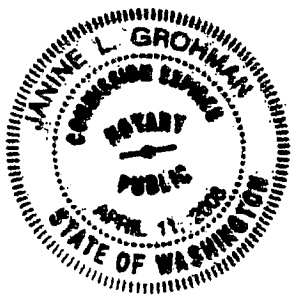
30 AFFIDAVIT OF BILL FIEDLER - 2

Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

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BILL FIEDLER

Subscribed under oath before me this 14th day of November, 2006.



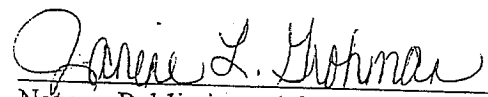

Notary Public in and for the
State of Washington, residing at Spokane.
My Commission Expires: April 11, 2008

EXHIBIT 4

SPOKESMANREVIEW.COM

Monday

Harris hiring flap near boiling point

Neighborhood Alliance, county at odds over records inquiry; nepotism denied

Amy Cannata
Staff writer
October 22, 2005

A legal battle is erupting over a Spokane County seating chart, charges of nepotism and the alleged withholding of public records.

The Spokane Neighborhood Alliance, helped by the nonprofit Center for Justice, contends it has evidence that one of Commissioner Phil Harris' sons may have been promised his county job before it was even advertised.

The group is demanding access to public records that it says the county refuses to supply.

County officials, however, say they've given the Neighborhood Alliance all the records they have on the subject.

The dispute has reached such a heightened level that the two sides are now threatening legal action against each other.

In an Oct. 7 letter to the county, Center for Justice Executive Director Breean Beggs warned that the Neighborhood Alliance could file a lawsuit over the documents and that the county could be fined.

Chief Civil Deputy Prosecuting Attorney Jim Emacio shot back, suggesting in an Oct. 14 response that apologies are in order for "challenging the integrity of County employees." That letter threatened that any legal action from the Neighborhood Alliance will force the county to countersue, which could lead to considerable legal fees assessed against the alliance.

It's a complicated battle that began in February when someone anonymously mailed a Spokane County Building and Planning Department seating chart to a Neighborhood Alliance member.

The alliance is now fighting with Spokane County officials over requested public records regarding that seating chart, which places an unknown "Steve" in the Building and Planning Department.

Neighborhood Alliance Director Bonnie Mager said she believes the February seating chart refers to Stephen Harris, Spokane County Commissioner Phil Harris' son, who was hired in March by the county.

Because the seating chart was created before that position was posted for applicants, Mager said it may prove that Harris was promised the job because of his connections rather than being given it because of his qualifications.

"The name's on there before the job has even been posted – big red flags," said Beggs.

Harris doesn't sit in the location in question on the seating chart.

http://www.spokesmanreview.com/tools/story_pf.asp?ID=97345

3
11/20/2006 412

Mager and the Center for Justice, however, say the county isn't giving them all the records they requested regarding the chart, and furthermore are questioning why one computer document was altered.

A computer log shows that file was modified on an earlier date than it was created.

"I think it's very peculiar, and we need to get to the bottom of it," said Mager.

"It's not an allegation of wrongdoing," said Beggs. "The question is who did it and why?"

The explanation is simple, said Spokane County Information Systems Department Director Bill Fiedler: The "created on" date was automatically changed when Building and Planning Assistant Director Pam Knutsen's computer files were moved to a new computer as part of a regular system of upgrades. That act changes all of the computer's "created on" dates to the date of the move.

That's a different explanation from that given by county legal staff to Beggs.

In a letter to Beggs, Emacio explained that the data was moved between two servers as part of the county's routine computer maintenance.

Emacio later corrected that assertion, and Fiedler said the discrepancy was unintentional – a member of his staff had assumed the date change was caused by a server switch.

The difference between a server switch and a computer switch does have implications when it comes to the data.

Had the information been stored on a central county server rather than Knutsen's computer, it may have been possible to get the actual date the file was created from a backup file, said Fiedler.

There is no such file for individual county computers, he explained.

Both Emacio and Knutsen take umbrage at Beggs' suggestions in a letter to the county that the data overwrite may have been an intentional act to hide information.

"There's no way. I'm not going to go and do something and jeopardize my career," Knutsen said.

The computer was upgraded in late April, before the Neighborhood Alliance filed its records request.

To complicate matters, there were two Steves on the seating chart. When asked this week about the chart, Knutsen said one of the Steves it referenced is Steve Davenport, a longtime county planner. But Davenport's extension is listed by a second reference to Steve on the page.

Knutsen said that the seating chart was a work in progress and more for the purpose of arranging cubicles than where to put individuals.

Several other seating charts have duplicate names on them as well, she said, adding that when two people with the same first name were listed, one would be identified with a last name initial.

Another name on the seating chart in question, "Ron," did refer to a real person who was not working for the county at the time but was hired later.

4

Ron Hand was laid off when Spokane Valley incorporated and the county cut back on building and planning staff. His position was posted, and he was rehired after the chart was created.

That's because he obviously had the experience for the job, Knutsen said.

There are other issues in dispute related to the difference between using public records law to ask for information versus records.

Emacio said that the Neighborhood Alliance is asking for information about who the Steve and another name on the seating chart are – not records – and public disclosure laws don't mandate that the county give out information not contained on records.

Beggs agreed that public records laws don't allow people to ask governmental bodies questions, but said he and the alliance are asking for records, not simply answers.

"They've never said, 'We don't have those documents,' " Beggs said, adding, "It's pretty clear they don't want to give those records."

Commissioner Harris said the county isn't hiding anything.

"We're clean as a hound's tooth. We've given them everything we have," Harris said.

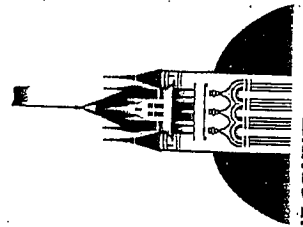
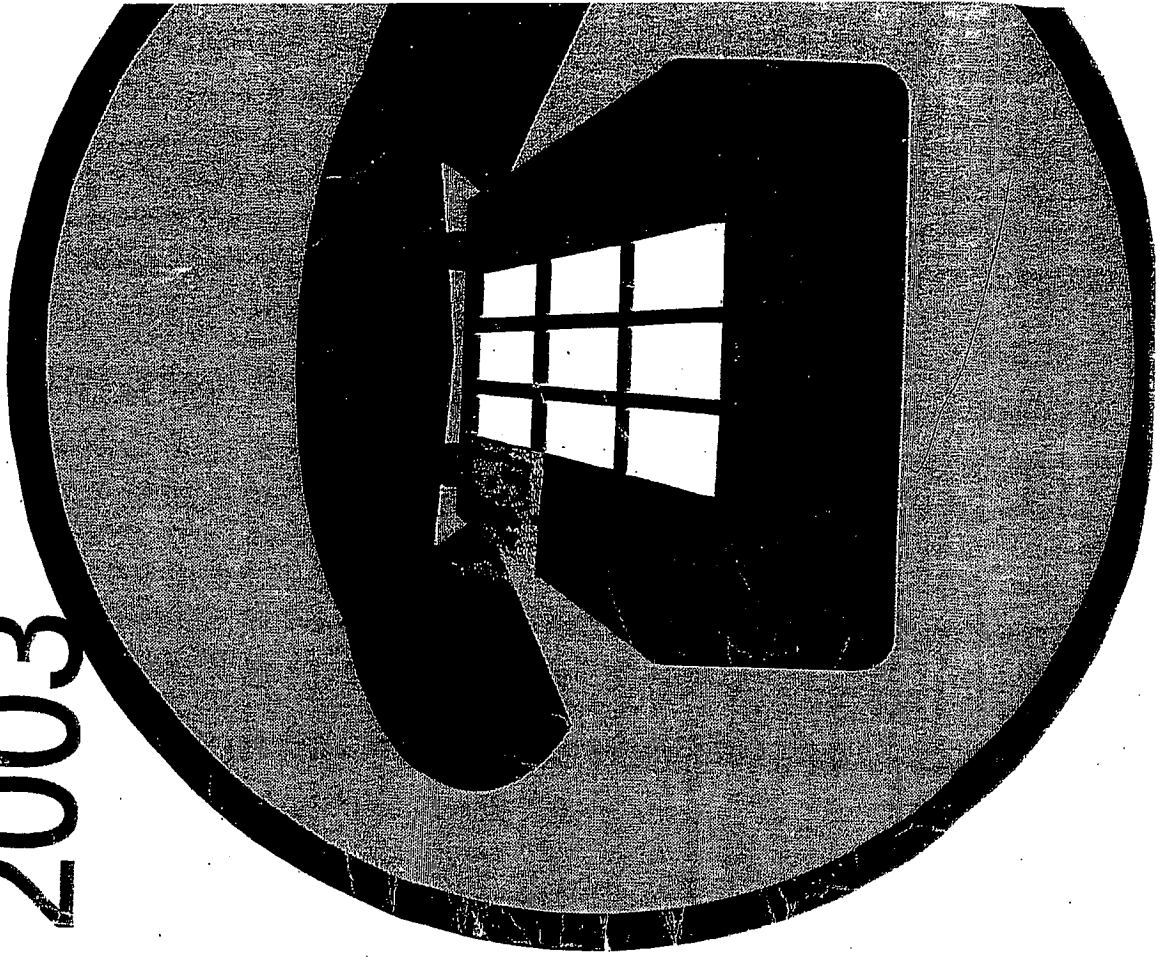
EXHIBIT 5

\$2.31 + \$0.19 (tax) = \$2.50

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BUILDING AND PLANNING DEPARTMENT

A Division of Public Works

1028 W Broadway Avenue Spokane, WA 99260-0050

FAX: 477-4703 TDD: 477-7133

TELEPHONE: ALL BUSINESS

James L. Manson, Director 477-3675
Mark Holman, Assistant Director of Building 477-7119
John Pederson, Assistant Director of Planning 477-7120
Pam Knutsen, Office Administrator 477-7212
FIELD INSPECTION/ENFORCEMENT 477-7100

Benish, Bill 7142 Erickson, Art 7111
Fluno, Leonard 7143 Krienke, George 7144
Larson, John 7123 Mascardo, Jun 7106
Paladichuk, Frank 7105 Runkle, Dan 7109
Stone, Bobby 7146 Ulley, Tim 7140
Vissla, Randy 7126 Walker, Mark 7138
Zehm, Bill 7145

GMA/REGIONAL PLANNING

Davenport, Steve 7221 Jensen, Paul 7213
Lawhead, Tim 7214 Liberty, Theresa 7230

COMPUTER/GIS/GRAPHICS

Allert, Hal 7234 Dellinger, Chuck 7215
Hunt, Bruce 7233 Wilkinson, John 7155
Jones, Tammy 7225 Millgard, Jim 7205
Moser, Bill 7154 Nunnery, John 7164
Sanders, Kathy 7164

BUILDING & PLANNING SUPPORT

Bates, Allison 7102 Bidowski, Terri 7227
Carver, Laurie 7127 Fisher, Jody 7208
Frazier, Carol 7124 Hintz, Faith 7137
Poole, Patty 7139 Truax, Diane 7121
Wendel, Gloria 7104

PERMIT ISSUANCE

Burris, Robin 7131 Fory, Jeff 7103
Shatto, Julie 7128

PLAN REVIEW

Jeffrey, Ken 7108 Postlewait, Tom 7107

CHILDREN'S WAITING ROOM

721 N. Jefferson, Room 101, Broadway Centre Bldg., Spokane 99260 477-6815

CIVIL SERVICE COMMISSION

1229 W. Mallon, Spokane, 99260-0080
Fax: 477-2653

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Sarah Houk-Thorton, Court Clerk

N

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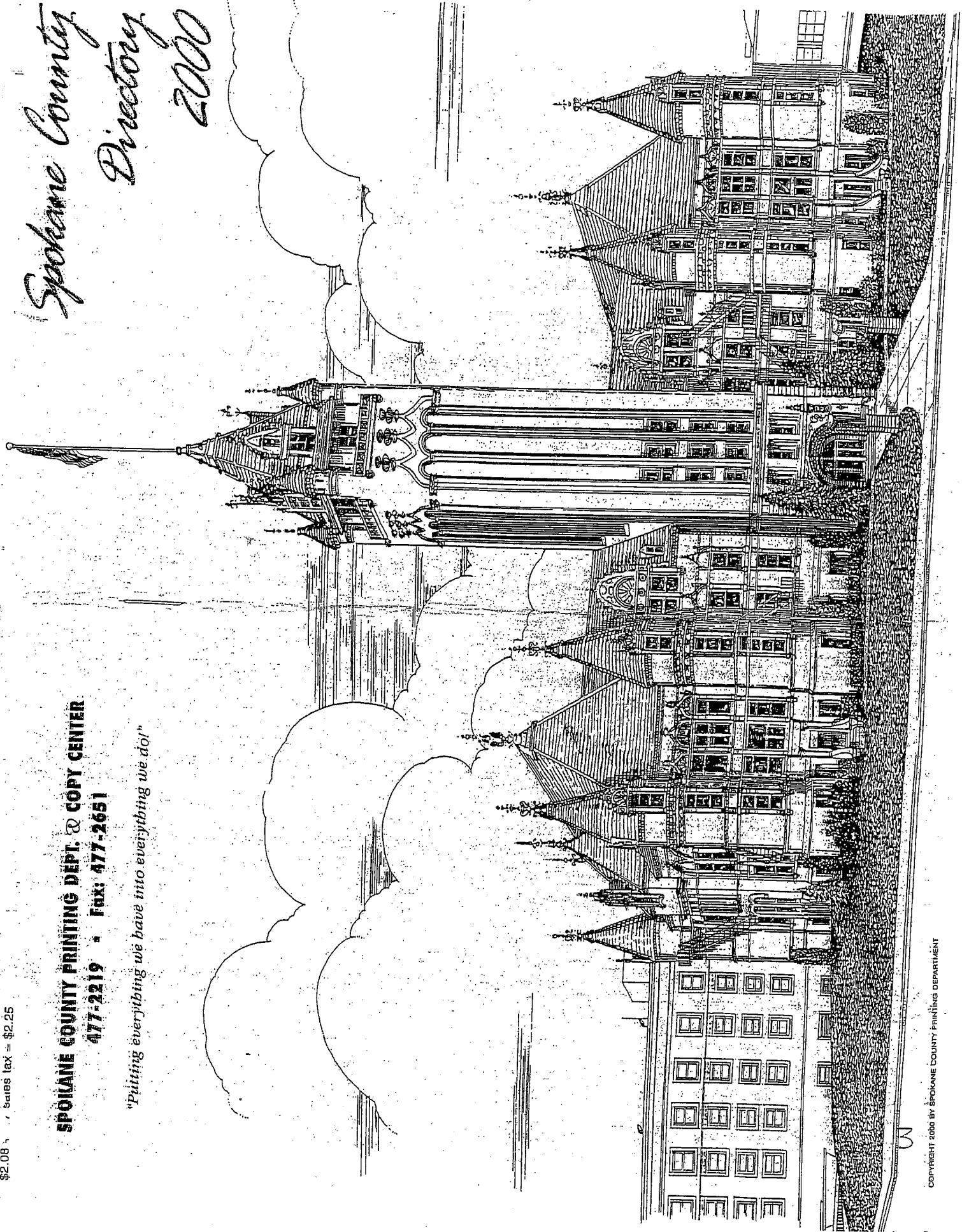
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LONG RANGE PLANNING

Fax: 477-7663

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477-7227

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TDD Users—Emergency Only 456-2233

TDD Users Only—Other Business Dial 9-1-1

City Police Business (Auto Attended—Touch Tone Only) 625-4445

Abandoned Vehicle Report Line (inside city limits) 625-4000

625-4246

ADMINISTRATION DIVISION 625-4050

Fax: 625-4066

Chief of Police: Roger Bragdon

Assistant Chief 625-4050

Deputy Chief: Chuck Bown 625-4031

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Administrative Secretary: LaHayne Conley 625-4056

Administrative Services Director: Dave Ingle 625-4063

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COPS Logan, 802 E. Sharp 625-3333

COPS North Central, 630 W. Shannon 625-3348

COPS Northeast, 5208 N. Market 625-3343

COPS Northwest, Suite 204, Shadle Center 625-3336

COPS Southeast, 2824 E. 29th 625-3326

COPS Southwest, 1608 W. 6th, #7 625-3328

COPS West, 1901 W. Boone 625-3340

COPS Neva-Wood, 4705 N. Addison 625-3353

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625-4054

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Evans, Craven & Lackie, P.S.

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Norma J. Tillotson

Hugh O. Evans* - of counsel
Joseph A. Esposito - of counsel

*also admitted in Idaho
**also admitted in Idaho, Montana & Oregon

Respond to: Spokane

September 21, 2007

Breean L. Beggs
Center for Justice
35 W. Main Ave., Ste. 300
Spokane, WA 99201

Re: **Neighborhood Alliance vs. Spokane County**

Dear Breean:

We're making progress here and my client and I appreciate your provision of the deposition questions in advance of the deposition. Under Rule 31 we have until September 22nd to propose cross-examination questions but in light of the questions asked we probably won't do that. We will, however, continue to object on the bases that we have previously objected to questions which call for the explanation of documents, to either admit or deny what documents say, to agree or disagree with your client's take on their meaning or import, or otherwise to go beyond that which was agreed on the record at the hearing on December 5, 2005: did the documents exist and what was the process to look for them. I have enclosed a copy of that portion of the transcript of the hearing. You'll see that Judge Borst was reluctant to grant any discovery at all.

So, before we get to the deposition, please be advised that Ms. Knutsen will respond to deposition questions 1, 2, 3, 4, 5, 9, 10, 12, 13 and 53.

Ms. Knutsen will respond to questions 6, 7-8, 11, 25-26 and 38-39 after the appropriate objection is lodged for the record.

Ms. Knutsen will not answer questions 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27-28, 29-30, 31, 32, 33, 34, 35-36, 37, 40-41, 42-43, 44-45, 46-47, 48-50, 51 and 52. I suggest we discuss this before you go to the expense of hiring the court reporter. Again, your client is asking questions regarding the interpretation of documents, confirmation of what documents may or many not represent and the like. Those are all matters for your client to argue at some point but have nothing to do with the limited discovery that the Neighborhood Alliance was granted during our hearing last December. Because the Neighborhood Alliance continues to expand the field of discovery into areas which have nothing to do with the actual request and Spokane County's

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September 21, 2007

Page 2

response, Spokane County will continue to refuse to answer those questions. This is not the proper cause of action to pursue whatever it is that your client seeks by those questions.

We also need to discuss the deposition itself. If you would like to merely have Ms. Knutsen answer the questions like one would answer interrogatories, in writing and signed before a notary then we can do that. If you wish to take Ms. Knutsen's deposition by written questions on October 12, 2007, then under Rule 30 only Ms. Knutsen need appear at the court reporters office. If you do attend she will address you to be courteous but will not answer any questions other than those posed. Since Spokane County has posed no cross-examination questions your deposition questions are set, subject to the above explanation of objections; there are no response questions for you to reply to so we're done.

Please give me a call to discuss how you'd like to handle the objections and whether Ms. Knutsen needs to go to the court reporter's office on October 12th.

Very truly yours,


PATRICK M. RISKEN

cc: Rob Binger
Candy Drews

423

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LINCOLN

NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, a non-profit
corporation,

Plaintiff,

vs.

Case No. 06-2-00107-0

COUNTY OF SPOKANE, a political
subdivision of the State of
Washington,

Defendant.

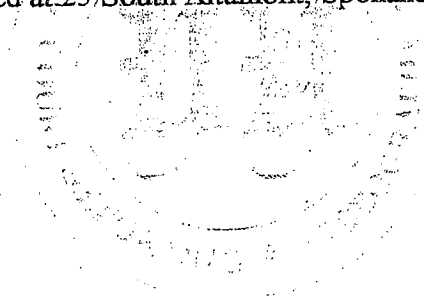


DEPOSITION BY WRITTEN QUESTIONS
OF PAMELA KNUTSEN

Taken on behalf of the Plaintiff

Friday, October 12, 2007

BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the deposition of PAMELA KNUTSEN was taken before PATRICIA DIANE FONTANA, a Certified Shorthand Reporter, #3107, and a Notary Public for the State of Washington, on Friday, October 12, 2007, commencing at the hour of 10:20 a.m., the proceedings being reported at 25 South Altamont, Spokane, Washington.



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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF LINCOLN

3
4 NEIGHBORHOOD ALLIANCE OF
5 SPOKANE COUNTY, a non-profit
6 corporation,

7 Plaintiff,

8 vs. Case No. 06-2-00107-0

9 COUNTY OF SPOKANE, a political
10 subdivision of the State of
11 Washington,

12 Defendant.

13 DEPOSITION BY WRITTEN QUESTIONS

14 OF PAMELA KNUTSEN

15 Taken on behalf of the Plaintiff

16 Friday, October 12, 2007

17
18 BE IT REMEMBERED THAT, pursuant to the Washington Rules of
19 Civil Procedure, the deposition of PAMELA KNUTSEN was taken
20 before PATRICIA DIANE FONTANA, a Certified Shorthand
21 Reporter, #3107, and a Notary Public for the State of
22 Washington, on Friday, October 12, 2007, commencing at the
23 hour of 10:20 a.m., the proceedings being reported at
24 25 South Altamont, Spokane, Washington.
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10 Email: Breean@CFJustice.org

11 Appearing on behalf of the Plaintiff

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13 Patrick M. Risken, Esq.

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16 Suite 250

17 Spokane, Washington 99201

18 Phone: (509) 455-5200

19 Fax: (509) 455-3632

20 Email: PRisken@ECL-Law.com

21 Appearing on behalf of the Defendant

22
23
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25

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EXAMINATION INDEX

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EXHIBIT INDEX

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2	Letter dated May 16, 2005 addressed to Kathy Malzahn from Bonnie Mager	4
3	Affidavit of Bill Fiedler	4
4	Article from SpokesmanReview.com	4
5	Spokane County 2003 Telephone Directory	4
6	Spokane County Directory 2000	4
7	Notice of Plaintiff's Deposition by Written Questions	4
8	Defendant's Objections to Deposition Questions	4

1 SPOKANE, WASHINGTON

2 FRIDAY, OCTOBER 12, 2007

3 10:20 A.M.

4 PAMELA KNUTSEN,

5 having been first duly sworn, was examined and testified
6 as follows:

7 EXAMINATION

8 MR. BEGGS: Both parties have agreed that the
9 written deposition questions will just be part of the
10 record, including the definitions and precatory language;
11 and, secondly, that defendant has brought and is submitting
12 formal objections to specific questions. Those are
13 incorporated in the record so that we don't have to read
14 them.

15 And my understanding is the deponent is going
16 to answer -- we'll ask you to read the questions that the
17 deponent is going to answer without objection, and also
18 read the questions that the opponent -- deponent -- is
19 going to answer but with objection. And we can just forgo
20 reading the questions that aren't going to be answered due
21 to objections.

22 MR. RISKEN: That sounds fine.

23 (The aforementioned documents were marked
24 Exhibits 1 through 8 for identification and
25 are attached hereto.)

1 MR. BEGGS: And so just to tell you, the first
2 five questions are she's going to answer without objection.
3 So we can just do those.

4 THE REPORTER: Question 1: Attached as
5 Exhibit 1 to this deposition is a copy of the undated
6 seating chart provided by Pam Knutsen to Bonnie Mager on or
7 about May 13, 2005, referenced in Pam Knutsen's affidavit
8 at paragraph 5 and the May 16th records request that was
9 attached as Exhibit A to said affidavit (see Exhibit 2 to
10 this deposition). Please confirm that this is an accurate
11 copy of the seating chart that Ms. Knutsen provided to the
12 Neighborhood Alliance on or about May 13, 2005.

13 THE WITNESS: It appears to be, yes.

14 MR. BEGGS: It's "K-nutsen."

15 THE REPORTER: "K-nutsen."

16 MR. BEGGS: And it isn't "May-ger." It's
17 "May-ger," not "May-jer."

18 THE REPORTER: Question 2: Please confirm
19 that this seating chart existed on Pam Knutsen's "PC" prior
20 to April 26, 2005.

21 THE WITNESS: Yes.

22 THE REPORTER: Question 3: Please confirm that
23 a copy of this seating chart was transferred to
24 Ms. Knutsen's new PC on or about April 26-27 as described
25 in the affidavit of Bill Fiedler at paragraph 4. (See

1 Exhibit 3).

2 THE WITNESS: Yes.

3 THE REPORTER: Question 4: Is there any reason
4 to believe that the electronic version of the seating chart
5 referenced in the previous three questions (Exhibit 1 to
6 this deposition) was ever stored on any computer or
7 computer network other than Ms. Knutsen's old "PC" and her
8 replacement "PC"?

9 THE WITNESS: No.

10 THE REPORTER: Question 5: If the answer was
11 yes to the -- I guess we can skip that.

12 And No. 6?

13 MR. BEGGS: And -- I'm sorry. So questions 6,
14 7, and 8, they have filed written objections, but they're
15 going to -- she's going to answer.

16 MR. RISKEN: Correct.

17 THE REPORTER: Question 6: Please describe any
18 security measures that Ms. Knutsen's old PC had at any time
19 in 2005 that would have limited access to records (e.g.
20 Exhibit 1) stored on Pam Knutsen's "PC" to individuals
21 other than Pam Knutsen.

22 THE WITNESS: Um, no security other than
23 password log in.

24 THE REPORTER: Question 7: Is there any reason
25 to believe that any person other than Pam Knutsen either

1 created and/or accessed the seating chart at
2 Exhibit 1 to this deposition on Pam Knutsen's old "PC"
3 prior to its replacement?

4 THE WITNESS: No.

5 THE REPORTER: Question 8: If the answer -- I
6 guess we can skip that.

7 Question 9: Please identify the date that the
8 data on Pam Knutsen's "old PC" was wiped off its hard drive
9 as described in the affidavit of Bill Fielder at paragraph
10 6 (Exhibit 3).

11 THE WITNESS: Bill Fielder would know, per his
12 affidavit.

13 THE REPORTER: Question 10: Please identify
14 the person who performed the data wipe as described in the
15 previous question.

16 THE WITNESS: It was done by a -- an employee
17 of ISD under the supervision of Angela Cane.

18 THE REPORTER: Question 11: Please identify
19 any written or electronic record that would document the
20 date of the data wipe of Ms. Knutsen's old "PC" and any
21 information that would lead to believe that the data wipe
22 was completed prior to the County receiving the May 16th
23 records request attached as Exhibit A to the affidavit of
24 Pam Knutsen (Exhibit 2).

25 THE WITNESS: I can't answer that. I

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1 wouldn't know.

2 THE REPORTER: Question 12: Please describe
3 any and all efforts made by County employees to confirm
4 whether or not Pam Knutsen's old "PC" retained any record
5 of the seating chart at Exhibit 1 to this deposition.

6 THE WITNESS: Again, that would be through ISD
7 staff.

8 THE REPORTER: Question 13: If any such
9 efforts were made, please state the name of the person(s)
10 who made them, the date(s) made and the identities and
11 custodians of any records that documented those efforts.

12 THE WITNESS: Same answer as the previous.

13 MR. BEGGS: Now we're getting to the ones that
14 she's not going to answer, which are 14 through 24. So
15 like 25 and 26 are next.

16 THE REPORTER: Question 25: Is it true that
17 providing a copy of Exhibit 5 to this deposition would have
18 been responsive to the Neighborhood Alliance's May 16, 2005
19 request for records (Exhibit 2 to this deposition) "that
20 record the following information...Also, the identity of
21 the individual listed as 'Steve' in the cubicle with the
22 number 7221 at the top of the chart"?

23 THE WITNESS: It's a long question.

24 MR. RISKEN : Exhibit 5.

25 THE WITNESS: Right. It's the phone directory,

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1 as referred to in Exhibit 2.

2 No.

3 THE REPORTER: Question 26: If not, please
4 explain why not.

5 THE WITNESS: It's not -- I don't think it
6 answers the question, that this would answer the question
7 that's posed in the letter, in Exhibit 2.

8 MR. BEGGS: Let's see. Thirty-eight looks like
9 the next one.

10 I'm assuming, Pat, your objections match up to
11 what you're -- you didn't make any changes?

12 MR. RISKEN: I did not.

13 MR. BEGGS: Okay. Great. Question 38 and 39.

14 THE REPORTER: Question 38: Is it true that
15 providing a copy of Exhibit 6 to this deposition would have
16 been responsive to the Neighborhood Alliance's May 16, 2005
17 request for records (Exhibit 2 to this deposition) "that
18 record the following information...The identities of 'Ron &
19 Steve,' individuals who are situated near the center of the
20 seating chart referenced in Exhibit 1"?

21 THE WITNESS: No. No.

22 THE REPORTER: Question 39: If not, please
23 explain why not.

24 THE WITNESS: Well, it would be the same answer
25 as I gave before on -- was it 26?

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1 THE REPORTER: What's next?

2 MR. BEGGS: It looks like 49.

3 MR. RISKEN: Fifty-three.

4 MR. BEGGS: Oh. Fifty-three. Sorry.

5 THE REPORTER: Question 53: What is your full
6 name, job title and relationship with Spokane County?

7 THE WITNESS: Pamala Jo Knutsen; job title is
8 Assistant Director for Building and Planning; my
9 relationship is employee.

10 MR. BEGGS: How do you spell "Jo"?

11 THE WITNESS: J-O.

12 MR. BEGGS: Okay.

13 THE REPORTER: Do you need the transcript
14 prepared?

15 MR. BEGGS: Yeah. Not a rush.

16 (A brief discussion was held off the record.)

17 THE REPORTER: And do you need a copy?

18 MR. RISKEN: If it's ordered.

19 (At 10:35 a.m. the deposition concluded.)

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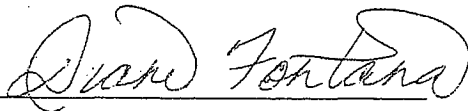
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CERTIFICATE

I, Diane Fontana, do hereby certify that pursuant to the Rules of Civil Procedure, the witness named herein appeared before me at the time and place set forth in the caption herein; that at the said time and place, I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 22nd day of October , 2007.



Diane Fontana

December 12, 2007

Commission Expiration

CORRECTION SHEET

DEPOSITION OF: PAMELA KNUTSEN

DEPOSITION DATE: OCTOBER 12, 2007

REGARDING: NEIGHBORHOOD ALLIANCE VS COUNTY OF SPOKANE

NRC FILE/COURT REPORTER: 8082-1/DIANE FONTANA

I have read the above-mentioned transcript and listed below the following corrections or additions:

PAGE#	LINE	CORRECTION
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9

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NOTARY CERTIFICATE

STATE OF _____: (Notary fills out)

COUNTY/CITY OF _____: (Notary fills out)

Before me, this day, personally appeared,
PAMELA KNUTSEN who, being duly sworn, states that the
foregoing transcript of his/her Deposition, taken in the
matter, on the date, and at the time and place set out on
the title page hereof, constitutes a true and accurate
transcript of said deposition.

PAMELA KNUTSEN

(Deponent's Signature)

SUBSCRIBED and SWORN to before me this _____ day of
_____, 20____ in the jurisdiction aforesaid.

(Notary fills out)

(Notary fills out)

Notary Public

(Notary fills out)

My Commission Expires

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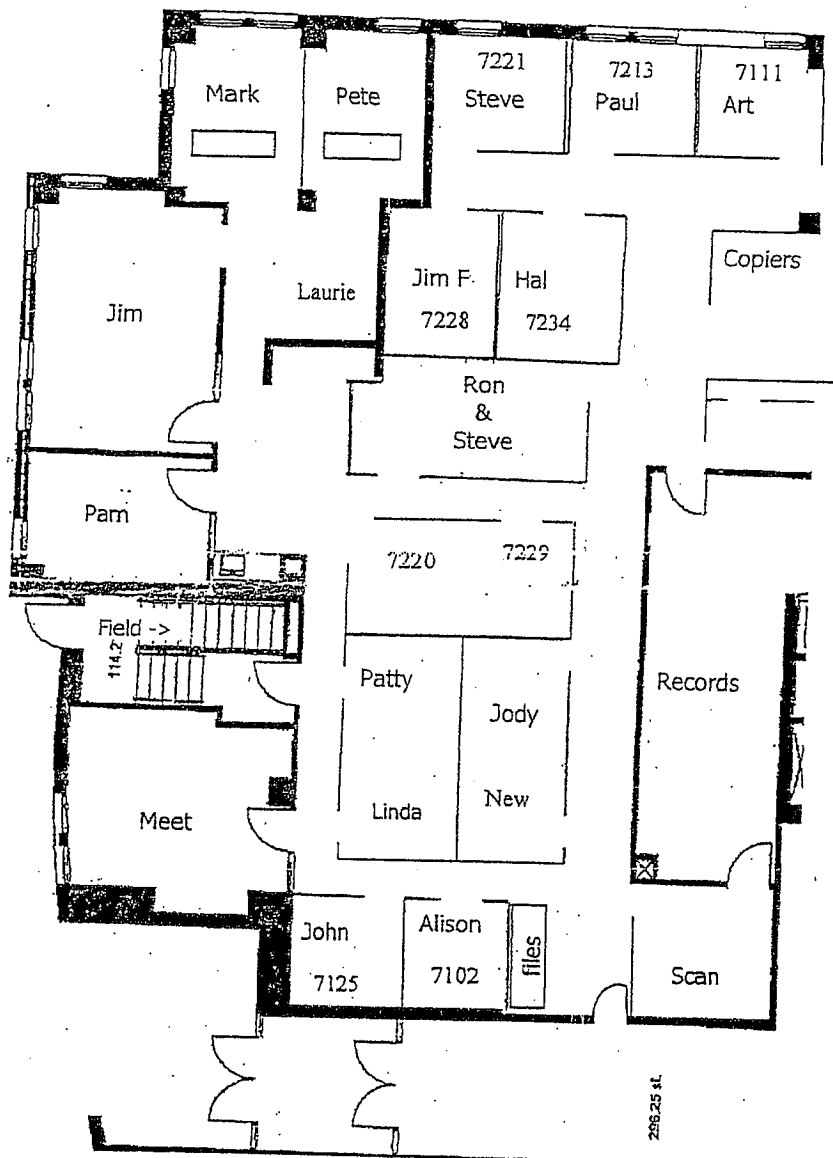
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EXHIBIT 1

Date 10/12/07 Exhibit # 1
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NOTE:
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Chuck Downstairs
Bruce Upstairs
GIST2 Upstairs

EXHIBIT 2

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Neighborhood Alliance of Spokane
35 W. Main, Suite 370, Spokane WA 99201
(509) 232-2772 www.neighborhood-alliance.org

May 16, 2005

Ms. Kathy Malzahn
1026 W. Broadway
Spokane WA 99260

Dear Ms. Malzahn:

On behalf of the Neighborhood Alliance of Spokane County I am making the following request for public records:

Pursuant to the state public records act (RCW 42.17) I am writing to request the opportunity to review public records created, received and/or retained by Pam Knutsen or any other county official or employee that record the following information:

- 1) The complete electronic file information logs for the updated county planning division seating chart provided by Ms. Knutsen to the Neighborhood Alliance on May 13th. This information should include, but not necessarily be limited to, the information in the "date created" data field for the document as it exists on the specific Microsoft Publisher electronic document file created for the referenced seating chart. The requested information should also include, but not be limited to, the computer operating system(s) data record indicating the date of creation and dates of modification for the referenced seating chart document.
- 2) The identities of "Ron & Steve" individuals who are situated near the center of the seating chart referenced in item #1. Also, the identity of the individual listed as "Steve" in the cubicle with the number 7221 at the top of the chart.

By the term public records, I am invoking a broad definition, consistent with RCW 42.17.020(36) and specifically mean to include records that exist in any electronic form as well as those that exist on paper. This should be read to include, but not be limited to, records preserved in paper, correspondence, electronic mail, facsimiles, videotape, and computer files.

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EXHIBIT NO. A

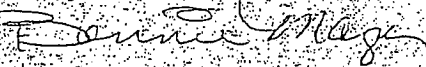
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MAY 17 2005

SPOKANE COUNTY
PROSECUTING ATTORNEY
CIVIL DIVISION

Pursuant to RCW 42.17.310, please identify any record covered by the above requests that is being withheld as exempt, and provide a summary of the record's content and the specific reason for the exemption.

Sincerely,



Bonnie Mager
Coordinator

cc: cc: Mark Holman, John Pederson, Laurie Carver, Terry Hontz, Marshall Farnell, Jim Emacio, Ron Cole, Gerry Gimmell, Steve Davenport, Paul Jensen, Hal Allert, Bruce Hunt, Jim Falk, Terry Liberty, Tammy Jones, Bill Moser, Jim Millgard, John Nunnery, Kathy Sanders, Robin Burns, Julie Shatto, Dan Howard, Jody Fisher, Terrie Bidowski, Linda Lemley, Faith Hintz, Diane Truax, Demaris Skaggs, Linda Phillips, Patty Poole, Ken Jeffrey, Tom Postlewaité, Brenda Sims, Bruce Rawls, Ian VonEssen, Bea Lackoff, Kevin Cooke, Ross Kelley, Arnie Swenson, Scott Engelhardt, James Manson, Pam Knutsen

EXHIBIT 3

Date 10/12/07 Exhibit # 3
Case ALLIANCE V. SPOKANE
Deponent P. KNUITSEN
Reporter DIANE FONTANA
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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF LINCOLN

9 NEIGHBORHOOD ALLIANCE OF
10 SPOKANE COUNTY, a non-profit
11 corporation,

12 Plaintiff,

13 vs.

14 COUNTY OF SPOKANE, a political
15 subdivision of the State of Washington,

16 Defendants.
17
18

No. 06-2-00107-0

AFFIDAVIT OF BILL FIEDLER

19 STATE OF WASHINGTON)
20 ss:
21 County of Spokane)

22 BILL FIEDLER, being first duly sworn upon oath, deposes and says:

23 1. I am, and at all times relevant hereto was, over the age of 18 years and a
24 resident of Spokane County, Washington. I make this Affidavit of my own personal
25 knowledge.

26 2. I am the Director of the Information Systems Department (ISD) for Spokane
27 County, and held that position at all times relevant herein.

28 3. In April 2005, Pam Knutsen's office computer ("PC") in the Building and
29

Evans, Croven & Lackie, P.C.

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Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

30 AFFIDAVIT OF BILL FIEDLER - 1

1 Planning Department was due for either rebuilding or replacement. That rebuilding/
2 replacement function is a normal day-to-day activity performed throughout the year by
3 Spokane County ISD, for all the various departments of the County of Spokane.

4 4. When performing the rebuild of a new PC or new hard drive for a PC, ISD does
5 this work in its own office. ISD personnel build up a new PC for replacement and then copy all
6 user documents that are on the hard drive of the PC being replaced over to the new PC. When
7 that copying takes place, all documents are given a new "Date Created." Once all documents are
8 copied, the new PC is delivered to the County employee. This was the procedure followed with
9 regard to Pam Knutsen's office PC in April 2005.

10 5. Data stored on local PCs Hard Drives, such as Ms. Knutsen's, are not "backed
11 up." That is, local PC Hard Drives such as Ms. Knutsen's are not backed up through the County
12 network. Therefore, the only information contained in that particular computer's Hard Drive
13 would be found on its hard drive. This status of "local PC Hard Drives" as not backed-up to the
14 County computer network is quite common.

15 6. ISD then takes the old PC and hard drive back to its office. Using a software tool
16 called "Wipe Drive" (wipedrv.exe), all data is wiped off the old hard drive. Wipe Drive is a
17 software tool that conforms to U.S. Department of Defense standards for ensuring that data on a
18 wiped drive is unrecoverable. That is necessary since some old hard drives are auctioned as
19 surplus parts. If an "unwiped" hard drive were sold, confidentiality would be breached.
20 Likewise, even hard drives that are rebuilt and put back into service in Spokane County offices
21 are "wiped", since "unwiped" hard drives might contain information which is confidential or
22 irrelevant to the new user's work or tasks. This is a standard practice of the County of Spokane
23 ISD, Spokane County uses this process on all rebuilt computers and this process was followed
24 with regard to Ms. Knutsen's PC in April 2005.

25 //

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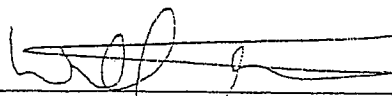
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30 AFFIDAVIT OF BILL FIEDLER - 2

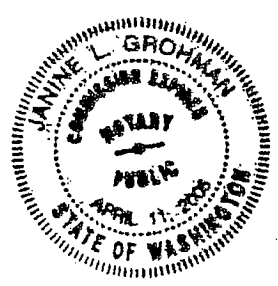
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BILL FIEDLER

Subscribed under oath before me this 14th day of November, 2006.



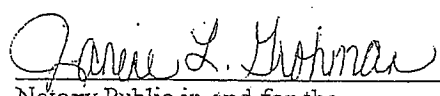

Notary Public in and for the
State of Washington, residing at Spokane.
My Commission Expires: April 11, 2008

EXHIBIT 4

Date 10/12/07 Exhibit # 4
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Monday

Harris hiring flap near boiling point

Neighborhood Alliance, county at odds over records inquiry; nepotism denied

Amy Cannata

Staff writer

October 22, 2005

A legal battle is erupting over a Spokane County seating chart, charges of nepotism and the alleged withholding of public records.

The Spokane Neighborhood Alliance, helped by the nonprofit Center for Justice, contends it has evidence that one of Commissioner Phil Harris' sons may have been promised his county job before it was even advertised.

The group is demanding access to public records that it says the county refuses to supply.

County officials, however, say they've given the Neighborhood Alliance all the records they have on the subject.

The dispute has reached such a heightened level that the two sides are now threatening legal action against each other.

In an Oct. 7 letter to the county, Center for Justice Executive Director Breean Beggs warned that the Neighborhood Alliance could file a lawsuit over the documents and that the county could be fined.

Chief Civil Deputy Prosecuting Attorney Jim Emacio shot back, suggesting in an Oct. 14 response that apologies are in order for "challenging the integrity of County employees." That letter threatened that any legal action from the Neighborhood Alliance will force the county to countersue, which could lead to considerable legal fees assessed against the alliance.

It's a complicated battle that began in February when someone anonymously mailed a Spokane County Building and Planning Department seating chart to a Neighborhood Alliance member.

The alliance is now fighting with Spokane County officials over requested public records regarding that seating chart, which places an unknown "Steve" in the Building and Planning Department.

Neighborhood Alliance Director Bonnie Mager said she believes the February seating chart refers to Stephen Harris, Spokane County Commissioner Phil Harris' son, who was hired in March by the county.

Because the seating chart was created before that position was posted for applicants, Mager said it may prove that Harris was promised the job because of his connections rather than being given it because of his qualifications.

"The name's on there before the job has even been posted - big red flags," said Beggs.

Harris doesn't sit in the location in question on the seating chart.

3

http://www.spokesmanreview.com/tools/story_pf.asp?ID=97345

11/20/2006

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Mager and the Center for Justice, however, say the county isn't giving them all the records they requested regarding the chart, and furthermore are questioning why one computer document was altered.

A computer log shows that file was modified on an earlier date than it was created.

"I think it's very peculiar, and we need to get to the bottom of it," said Mager.

"It's not an allegation of wrongdoing," said Beggs. "The question is who did it and why?"

The explanation is simple, said Spokane County Information Systems Department Director Bill Fiedler: The "created on" date was automatically changed when Building and Planning Assistant Director Pam Knutsen's computer files were moved to a new computer as part of a regular system of upgrades. That act changes all of the computer's "created on" dates to the date of the move.

That's a different explanation from that given by county legal staff to Beggs.

In a letter to Beggs, Emacio explained that the data was moved between two servers as part of the county's routine computer maintenance.

Emacio later corrected that assertion, and Fiedler said the discrepancy was unintentional – a member of his staff had assumed the date change was caused by a server switch.

The difference between a server switch and a computer switch does have implications when it comes to the data.

Had the information been stored on a central county server rather than Knutsen's computer, it may have been possible to get the actual date the file was created from a backup file, said Fiedler.

There is no such file for individual county computers, he explained.

Both Emacio and Knutsen take umbrage at Beggs' suggestions in a letter to the county that the data overwrite may have been an intentional act to hide information.

"There's no way. I'm not going to go and do something and jeopardize my career," Knutsen said.

The computer was upgraded in late April, before the Neighborhood Alliance filed its records request.

To complicate matters, there were two Steves on the seating chart. When asked this week about the chart, Knutsen said one of the Steves it referenced is Steve Davenport, a longtime county planner. But Davenport's extension is listed by a second reference to Steve on the page.

Knutsen said that the seating chart was a work in progress and more for the purpose of arranging cubicles than where to put individuals.

Several other seating charts have duplicate names on them as well, she said, adding that when two people with the same first name were listed, one would be identified with a last name initial.

Another name on the seating chart in question, "Ron," did refer to a real person who was not working for the county at the time but was hired later.

4

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Ron Hand was laid off when Spokane Valley incorporated and the county cut back on building and planning staff. His position was posted, and he was rehired after the chart was created.

That's because he obviously had the experience for the job, Knutsen said.

There are other issues in dispute related to the difference between using public records law to ask for information versus records.

Emacio said that the Neighborhood Alliance is asking for information about who the Steve and another name on the seating chart are – not records – and public disclosure laws don't mandate that the county give out information not contained on records.

Beggs agreed that public records laws don't allow people to ask governmental bodies questions, but said he and the alliance are asking for records, not simply answers.

"They've never said, 'We don't have those documents,' " Beggs said, adding, "It's pretty clear they don't want to give those records."

Commissioner Harris said the county isn't hiding anything.

"We're clean as a hound's tooth. We've given them everything we have," Harris said.

EXHIBIT 5

Date 10/12/07 Exhibit # 5
Case ALLIANCE V. SPOKANE
Deponent P. KNUTSEN
Reporter DIANE FONTANA
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

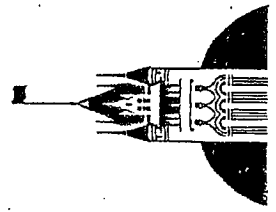
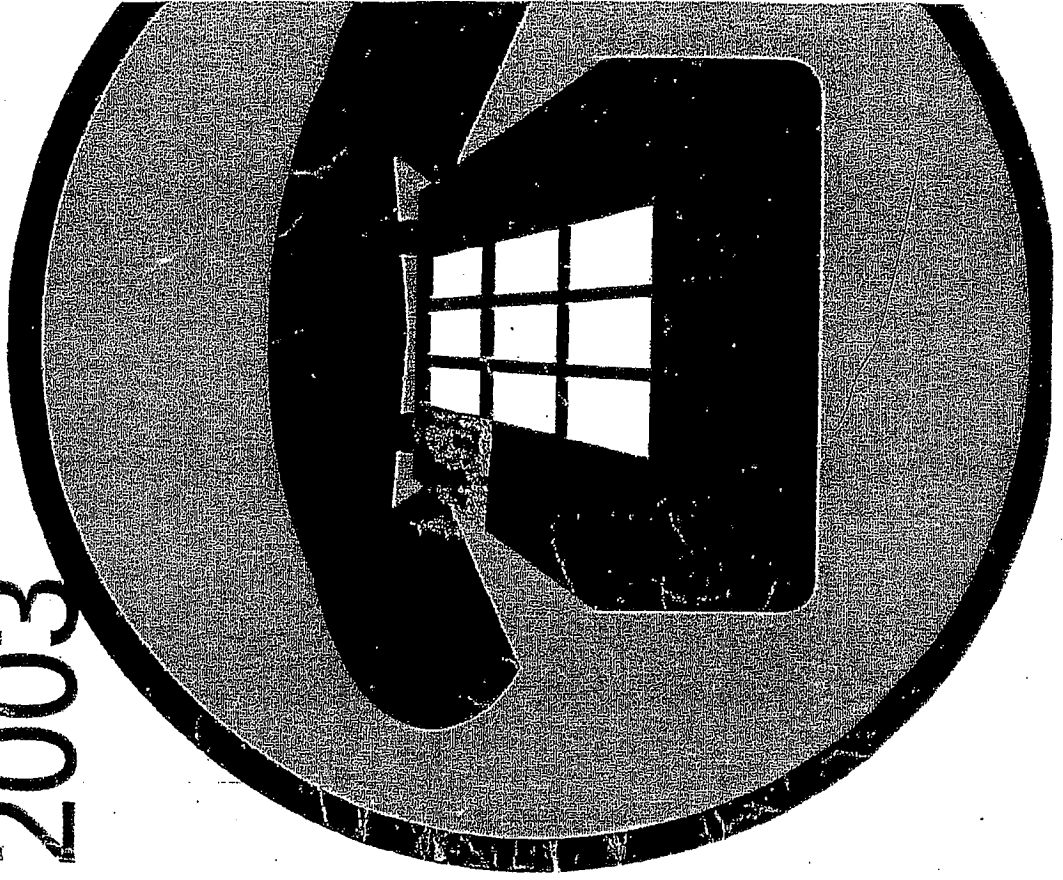
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BUILDING AND PLANNING DEPARTMENT

A Division of Public Works
1026 W Broadway Avenue Spokane, WA 99260-0050
FAX: 477-4703 TDD: 477-7133

TELEPHONE: ALL BUSINESS 477-3675

James L. Manson, Director 477-7119
Mark Holman, Assistant Director of Building 477-7120
John Pederson, Assistant Director of Planning 477-7212
Pam Krulsen, Office Administrator 477-7100

FIELD INSPECTION/ENFORCEMENT

Benish, Bill 7142 Erickson, Art 7111
Fluno, Leonard 7143 Krienke, George 7144
Larson, John 7123 Mascardo, Jun 7106
Paladichuk, Frank 7105 Runkle, Dan 7109
Stone, Bobby 7146 Ulley, Tim 7140
Vissia, Randy 7126 Walker, Mark 7138
Zehrt, Bill 7145

GWAREGIONAL PLANNING

Davenport, Steve 7221 Jensen, Paul 7213
Lawhead, Tim 7214 Liberty, Theresa 7230

COMPUTER/GIS/GRAPHICS

Allert, Hal 7234 Dellinger, Chuck 7215
Hunt, Bruce 7233 Wilkinson, John 7125

LAND USE PLANNING

Jones, Tammy 7225 Millgard, Jim 7155
Moser, Bill 7154 Nunnery, John 7205
Sanders, Kathy 7164

BUILDING & PLANNING SUPPORT

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Carver, Laurie 7127 Fisher, Jody 7208
Frazier, Carol 7124 Hintz, Faltz 7137
Poole, Patty 7139 Truax, Diane 7121
Wendel, Gloria 7104

PERMIT ISSUANCE

Burns, Robin 7131 Fory, Jeff 7103
Shatto, Julie 7128

PLAN REVIEW

Jeffrey, Ken 7108 Postlewait, Tom 7107

CHILDREN'S WAITING ROOM

721 N. Jefferson, Room 101, Broadway Centre Bldg., Spokane 99260 477-6815

CIVIL SERVICE COMMISSION

1229 W. Mallon, Spokane, 99260-0080

Fax: 477-2653

ALL BUSINESS 477-4711

Marlys O. Baca, Chief Examiner 477-4735
Nancy Paladino, Test Technician/Analyst 477-4526

CLERK AND CLERK OF THE SUPERIOR COURT.

1116 W. Broadway, County Courthouse, Room 300 and 302, Spokane 99260-0090

Fax: 477-3916 Email: SpoCoClerks@spokanecounty.org

RECEPTIONIST, Main Office 477-2211
Thomas R. Fallquist, County Clerk 477-2245

Gary D. Berg, Chief Deputy 477-2211

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Julie Edmunds, Lead Office Assistant 477-3902

Molly Scott, Office Assistant 477-3904

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Jeanne Coe 477-3917

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Linda Ellis 477-3906

Carol Hammer 477-3919

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Steve South

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Julia Farrell, Collections/Judgements 477-4213

Darrel Wood, Collections/Judgements 477-3910

Liz Mason, Accounting Tech 477-3912

Cassandra Dibler-Taylor, Accounting Tech 477-3905

Mary Beth Nickens, Accounting Tech 477-3911

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1115 W. Broadway, S & T Bldg., Basement, Spokane 99260

Karin Peterson, Supervisor 477-3930

Virginia Hochstadler, Lead Office Assistant 477-3952

Elaine Howerton, Office Assistant 477-3956

Teresa Pedey, Office Assistant 477-3940

JUVENILE DIVISION 1208 W. Mallon, Spokane 99260 477-2510

Tracy Samuelson, Supervisor 477-3924

Debra Taylor, Court Proc. Clerk 477-3944

Mary Stowe, Court Proc. Clerk 477-3951

Paula Hissom, Court Clerk Ann Michel, Court Clerk

Sarah Houk-Thorton, Court Clerk

EXHIBIT 6

Date 10/12/07 Exhibit # 6
Case ALLIANCE V. SPOKANE
Deponent P. KNUITSEN
Reporter DIANE FONTANA
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

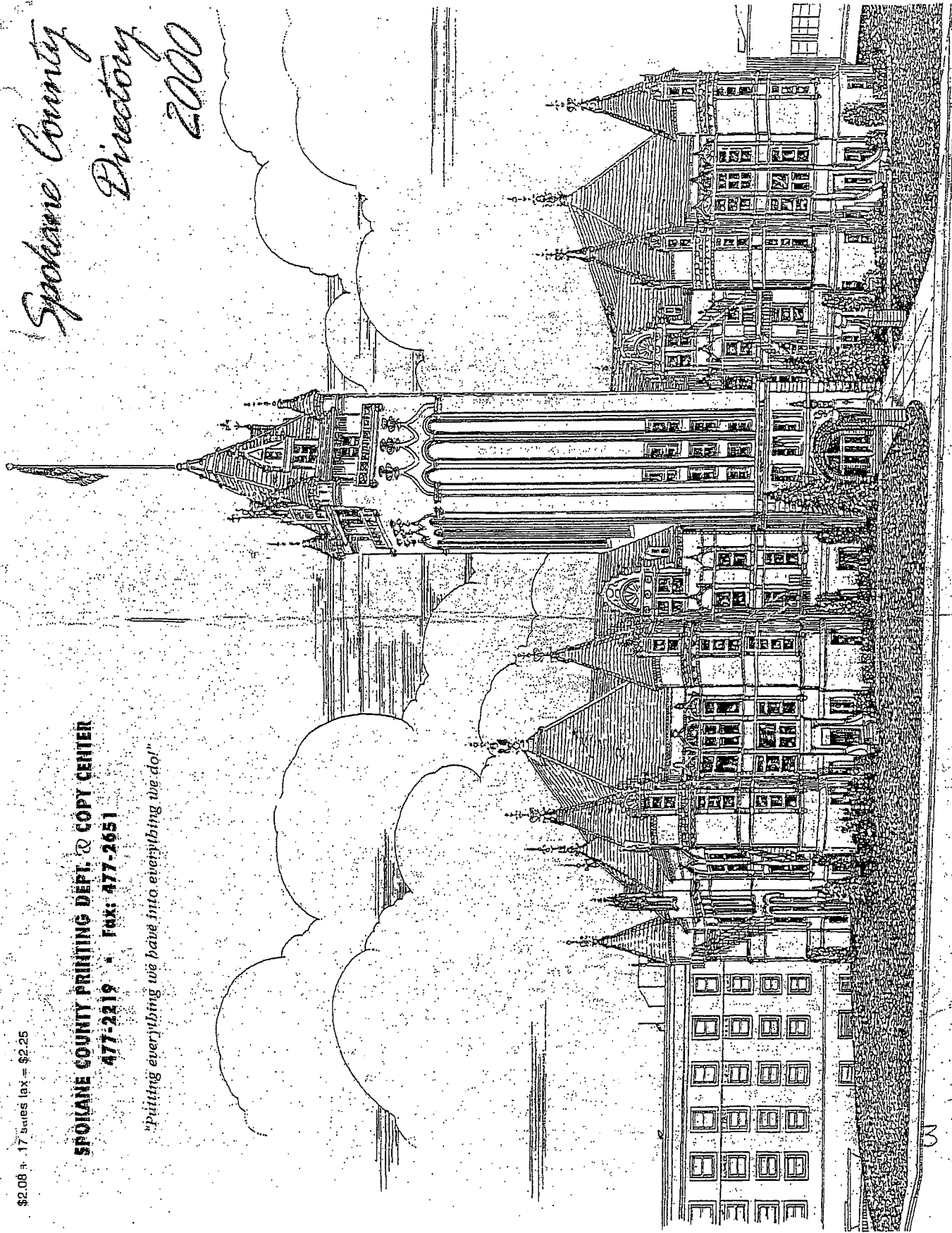
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Spokane County Directory 2000



Parks and Recreation (continued)

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 Bob Plummer Dan Godfrey Rod Brauner Bryant Robinson
 Dave Heil Todd Aaesby

PLANNING

A Division of the Public Works Department

1028 W. Broadway, Public Works Bldg., 2nd Floor, Spokane 99260-0240

Director 477-7194

LONG RANGE PLANNING

Fax: 477-7663

MEETING INFORMATION:

MAIN OFFICE 625-4725

Faye Uddy, Staff Assistant 477-7294

Terri Bidowski, Office Assistant 477-7229

GEOGRAPHIC INFORMATION SYSTEM (GIS) 477-7227

Bruce Hunt, GIS Planner 477-7233

Chuck Dellinger, Graphics Illustrator 477-7215

Dan Antonson, GIS Specialist 477-7232

STAFF

Paul Jensen, Sr. Planner 477-7213

Tim Lawhead, AICP, Sr. Planner 477-7214

John Pederson, Sr. Planner 477-7212

Hal Allert, Planner 477-7234

Steve Davenport, AICP, Planner 477-7221

Stacy Bjordahl, Planner 477-7201

Theresa Liberty, Planner 477-7230

Scott Kuhla, AICP, Planner 477-7226

Planning Interns 477-7250 / 477-7210

CURRENT PLANNING

Fax: 477-2243

MAIN OFFICE

Kris Chase, Staff Assistant 477-7200

Wanda Clark, Secretary 477-7216

Terri Millsbaugh, Secretary 477-7220

Rae Wright, Office Assistant 477-7207

Jody Fisher, Office Assistant 477-7209

PERMIT CENTER 477-7208

Kathy Lindsey, Zoning Technician 477-7164

Jim Millgard, Planner 477-7155

Bill Moser, Planner 477-7154

STAFF

John Nuthery, Planner 477-7205

Tammy Jones, Planner 477-7225

Jim Falk, Planner 477-7228

Jim Richardson, Planner 477-7168

Connie Grove, GIS Tech. (ISD) 477-7677

1

POLICE (City of Spokane)

1100 W. Mallon, Public Safety Building 99260-0001

Emergency Only Dial 9-1-1

Crime Reports/Crime Check (24-Hour Countywide Service) 456-2233

TDD Users—Emergency Only Dial 9-1-1

TDD Users Only—Other Business 625-4445

City Police Business (Auto Attended—Touch Tone Only) 625-4000

Abandoned Vehicle Report Line (Inside city limits) 625-4246

ADMINISTRATION DIVISION 625-4050

Fax: 625-4066

Chief of Police: Roger Bragdon 625-4050

Assistant Chief 625-4031

Deputy Chief: Chuck Bown 625-4026

Accountant 625-4056

Administrative Secretary: LaRayne Conley 625-4063

Administrative Services Director: Dave Ingle 625-4053

Chaplain: Ron Alter 625-3322

Media Information: Richard Collam 625-4456

Personnel: Kathy Panas 625-4055

Reception: Lee Henry 625-4001

CASE SCREENING 625-4172

COMMUNITY SERVICES UNIT, 901 N. Monroe 625-4080

Commander: Lt. Rex Olson 625-4086

Volunteer Services 625-4083

CRIME ANALYSIS 625-4247

DOMESTIC VIOLENCE TEAM, 901 N. Monroe 835-4500

INTERNAL AFFAIRS, 901 N. Monroe 625-4068

INVESTIGATIVE DIVISION (8 a.m.—4 p.m., Monday-Friday) 625-4200

Fax: 625-4233

Captain Steve Braun 625-4110

Narcotics 625-4010

Northwest Investigators 625-4250

South Investigators 625-4250

NEIGHBORHOOD SUBSTATIONS

COPS East Central, 3001 E. Fifth 625-3330

COPS Logan, 802 E. Sharp 625-3333

COPS North Central, 630 W. Shannon 625-3348

COPS Northeast, 5208 N. Market 625-3343

COPS Northwest, Suite 204, Shadle Center 625-3336

COPS Southeast, 2824 E. 29th 625-3326

COPS Southwest, 1608 W. 6th, #7 625-3328

COPS West, 1901 W. Boone 625-3340

COPS Neva-Wood, 4705 N. Addison 625-3353

TOP COPS, 1201 W. First 625-3350

PATROL DIVISION (Front Desk) 625-4100

Captain 625-4054

PLANNING UNIT

Sr. Planner: Bob Lincoln 835-4521

Date 10/12/07 Exhibit # 7
Case ALLIANCE V. SPOKANE
Deponent P. KNUFFSEN
Reporter DIANE FONTANA
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LINCOLN

NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, a non-profit
corporation,

Plaintiff,

vs.

COUNTY OF SPOKANE, a political
subdivision of the State of Washington,

Defendant.

Case No.: 06-2-00107-0

PLAINTIFF'S DEPOSITION BY
WRITTEN QUESTIONS TO SPOKANE
COUNTY'S DESIGNEE

TO: COUNTY OF SPOKANE:

Pursuant to CR 31, Plaintiff Neighborhood Alliance of Spokane County, through the undersigned attorney of record, propounds the following written questions to Spokane County's designee on the 12th day of October, 2007, to be directed to the designee by the court reporter before whom the deposition will be taken, as specified in the attached notice of deposition. The questions shall be answered separately and fully under oath and recorded by the court reporter as provided in CR 30(c).

In answering these questions you are required to furnish such information as is available to you, not merely the information which you know of your personal knowledge. This is

PLAINTIFF'S DEPOSITION QUESTIONS TO
SPOKANE COUNTY - 1

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

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Date 10/12/07 Exhibit # 7
Case ALLIANCE V. SPOKANE
Deponent P. KNUFSEN
Reporter DIANE FONTANA
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LINCOLN

NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, a non-profit
corporation,

Plaintiff,

vs.

COUNTY OF SPOKANE, a political
subdivision of the State of Washington,

Defendant.

Case No.: 06-2-00107-0

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COUNTY'S DESIGNEE

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PLAINTIFF'S DEPOSITION QUESTIONS TO
SPOKANE COUNTY - 1

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35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

463

1 intended to include any information in the possession of the agent or attorney or any investigator
2 for the answering party. These questions shall be continuing in nature, and you are required to
3 serve and file amended answers to questions promptly upon any additional information being
4 secured by you which would make the answers initially given incorrect or misleading.

5 6 DEFINITIONS

- 7
- 8 1. When used in reference to a natural person, "identify" or "identity" means to
9 state such person's full name, present or last known address and telephone
10 number, and present or last known employer.
 - 11 2. When used in reference to an entity or organization other than a natural person,
12 "identify" or "identity" means to state its full name, its principal business
13 address, and the nature of the entity or organization (e.g., corporation,
14 partnership, etc.).
 - 15 3. When used in reference to a document or public record, "identify" or "identity"
16 means to set forth the date of its creation and any subsequent revisions or
17 amendments, its author or authors, the designated and actual recipients, the
18 type of document or public record (e.g., letter, memorandum, notes, etc.), and
19 the identity of its present or last known custodian. Documents or public
20 records to be identified shall also include documents or public records with
21 respect to which a privilege may or is to be claimed.
 - 22 4. The term "identify" when used in connection with communications means to
23 describe each communication by stating:
 - 24 (a) When and where it was made;
 - 25 (b) Whether it was written or oral;
 - (c) The identity of each of the makers and recipients thereof, in addition to
all other persons, if any, present;
 - (d) The medium of the communication;
 - (e) Its substance.
 5. Communications to be identified shall include any communication as to which
any privilege is or may be claimed.
 6. The term "identify" when used in connection with a meeting, means to
describe each meeting by stating:

- (a) Where and when it was held;

PLAINTIFF'S DEPOSITION QUESTIONS TO
SPOKANE COUNTY - 2

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

(b) The identity of each of the participants, in addition to all other persons present;

(c) The substance of what took place at each such meeting.

7. "Document" as used herein incorporates by reference the definition of "writing" set forth in RCW 42.17.020(42) and also includes every tangible thing upon which is recorded, marked or impressed, any form of communication or representation, such as words, letters, pictures, sounds, symbols, or combinations thereof, including any tangible thing marked or impressed with any handwriting, typewriting, printing, photostating, photographing, transcribing, videotaping, or audio taping. "Document" as used herein also means and includes drafts, originals, and all copies, including all annotated copies, however produced or reproduced, and in the possession, custody or control of the Defendant or any of Defendant's attorneys or other agents or representatives. Further, if any document was, but no longer is in your possession or subject to your control, state what disposition was made of it.

8. The term "public record" carries the meaning set forth in RCW 42.17.020(36).

9. The term "County" refers to Defendant, County of Spokane.

10. The term "NASC" refers to the Plaintiff, Neighborhood Alliance of Spokane County.

11. The term "employee" refers to any current or former County employee or intern, whether paid or voluntary, full-time or part-time, permanent or temporary.

12. The term "official" refers to any current or former County official, elected or appointed.

13. The term "Act" refers to the Public Records Act, RCW 42.17.250 et seq.

14. The term "index" refers to any document or public record constituting an index, tabulation, summary, or listing of other documents or public records.

DATED this ____ day of September, 2007.

BREEAN BEGGS, WSBA #20795
Attorney for the Plaintiff

1
2 QUESTIONS

3 QUESTION 1. Attached as Exhibit 1 to this deposition is a copy of the undated seating chart
4 provided by Pam Knutsen to Bonnie Mager on or about May 13, 2005, referenced in Pam
5 Knutsen's affidavit at paragraph 5 and the May 16th records request that was attached as
6 Exhibit A to said affidavit (See Exhibit 2 to this deposition). Please confirm that this is an
accurate copy of the seating chart that Ms. Knutsen provided to the Neighborhood Alliance
on or about May 13, 2005.

7 ANSWER:
8

9 QUESTION 2. Please confirm that this seating chart existed on Pam Knutsen's "PC" prior to
10 April 26, 2005.

11 ANSWER:
12

13 QUESTION 3. Please confirm that a copy of this seating chart was transferred to Ms.
14 Knutsen's new PC on or about April 26-27 as described in the Affidavit of Bill Fiedler at
paragraph 4. (See Exhibit 3).

15 ANSWER:
16
17

18 QUESTION 4. Is there any reason to believe that the electronic version of the seating chart
19 referenced in the previous three questions (Exhibit 1 to this deposition) was ever stored on
any computer or computer network other than Ms. Knutsen's old "PC" and her replacement
"PC"?

20 ANSWER:
21
22

23 QUESTION 5. If the answer was yes to the previous question, please describe the basis for
24 this belief and give a description of the computer, computer network or operator of the
computer that held a version of the seating chart.

25 ANSWER:

1 QUESTION 6. Please describe any security measures that Ms. Knutsen's old PC had at
2 anytime in 2005 that would have limited access to records (e.g. Exhibit 1) stored on Pam
3 Knutssen's "PC" to individuals other than Pam Knutsen.

4 ANSWER:

5
6 QUESTION 7. Is there any reason to believe that any person other than Pam Knutsen either
7 created and/or accessed the seating chart at Exhibit 1 to this deposition on Pam Knutsen's old
8 "PC" prior to its replacement?

9 ANSWER:

10 QUESTION 8. If the answer was yes to the previous question, please describe the basis for
11 that belief and give a name or description of the person that you reasonably believe may have
12 created and/or accessed the seating chart, including the date and circumstances of access.

13 ANSWER:

14 QUESTION 9. Please identify the date that the data on Pam Knutsen's "old PC" was wiped
15 off its hard drive as described in the Affidavit of Bill Fiedler at paragraph 6 (Exhibit 3).

16 ANSWER:

17
18 QUESTION 10. Please identify the person who performed the data wipe as described in the
19 previous question.

20 ANSWER:

21
22 QUESTION 11. Please identify any written or electronic record that would document the
23 date of the data wipe of Ms. Knutsen's old "PC" and any information that would lead to
24 believe that the data wipe was completed prior to the County receiving the May 16th records
25 request attached as Exhibit A to the affidavit of Pam Knutsen (Exhibit 2).

ANSWER:

1
2 QUESTION 12. Please describe any and all efforts made by County employees to confirm
3 whether or not Pam Knutsen's old "PC" retained any record of the seating chart at Exhibit 1
4 to this deposition.

5
6 ANSWER:

7
8 QUESTION 13. If any such efforts were made, please state the name of the person(s) who
9 made them, the date(s) made and the identities and custodians of any records that
10 documented those efforts.

11
12 ANSWER:

13
14 QUESTION 14. In reference to the October 22, 2005 Spokesman Review article at Exhibit 4
15 to this deposition, the story reads, "When asked this week about the chart, Knutsen said one
16 of the Steves it referenced is Steve Davenport, a longtime County planner." Did the article
17 accurately attribute Pam Knutsen's statement to them that one of the Steves on the seating
18 chart was Steve Davenport?

19
20 ANSWER:

21
22 QUESTION 15. If not, please describe any inaccuracies regarding this statement and what
23 the correct attribution should have been.

24
25 ANSWER:

QUESTION 16. Is it true that one of the Steves on the seating chart at Exhibit 1 to this
deposition was a Spokane County employee in May of 2005 with the name, Steve
Davenport?

ANSWER:

QUESTION 17. If not, please explain why not.

ANSWER:

PLAINTIFF'S DEPOSITION QUESTIONS TO
SPOKANE COUNTY - 6

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

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1
2
3 QUESTION 18. Is it true that the numbers "7221" immediately following Steve Davenport's
4 name on the seating chart are identical to his telephone extension?

5 ANSWER:

6
7 QUESTION 19. If not, please explain why not.

8 ANSWER:

9
10 QUESTION 20. Is it also true that the second office space on the seating chart that includes
11 the name "Steve" does not contain the numbers "7221"?

12 ANSWER:

13
14 QUESTION 21. If not, please explain why not.

15 ANSWER:

16
17 QUESTION 22. Is it true that Exhibit 5 to this deposition contains the cover page for the
18 2003 Spokane County employee telephone directory as well as a page listing Steve
19 Davenport at extension 7221?

20 ANSWER:

21 QUESTION 23. If not, please explain why not.

22 ANSWER:

23
24 QUESTION 24. Please describe any efforts made by County employees/agents to locate and
25 provide any records to the Plaintiff that would have included Steve Davenport's name such
that he could have been identified on the seating chart at Exhibit 1.

1 ANSWER:

2
3
4 QUESTION 25. Is it true that providing a copy of Exhibit 5 to this deposition would have
5 been responsive to the Neighborhood Alliance's May 16, 2005 request for records (Exhibit 2
6 to this deposition) "that record the following information . . . Also, the identity of the
7 individual listed as 'Steve' in the cubicle with the number 7221 at the top of the chart."?

8 ANSWER:

9 QUESTION 26. If not, please explain why not.

10 ANSWER:

11
12 QUESTION 27. Is it true that as of May 16, 2005, Spokane County had in its possession
13 non-exempt records that contained the name "Steve Davenport" in them (e.g. memoranda,
14 emails, letters, directories, etc.)?

15 ANSWER:

16 QUESTION 28. If not, please explain why not.

17 ANSWER:

18
19 QUESTION 29. In reference to the October 22, 2005 Spokesman Review article at Exhibit 4
20 to this deposition, the story reads, "Another name on the seating chart in question, 'Ron,' did
21 refer to a real person who was not working for the county at that time but was hired later.
22 Ron Hand was laid off when Spokane Valley Incorporated and the county cut back on
23 building and planning staff. His position was posted, and he was hired after the chart was
24 created." Did the article accurately attribute Pam Knutsen's statement to them that the "Ron"
25 on the seating chart was Ron Hand?

26 ANSWER:

1 QUESTION 30. If not, please describe any inaccuracies regarding this statement and what
2 the correct attribution should have been.

3 ANSWER:

4
5 QUESTION 31. Is it true that "Ron" on the seating chart at Exhibit 1 to this deposition was
6 Ron Hand and that he was employed by Spokane County prior to May of 2005?

7 ANSWER:

8 QUESTION 32. If not, please explain why not.

9 ANSWER:

10
11 QUESTION 33. Is it true that Ron Hand was employed by Spokane County as an Assistant
12 Development Coordinator during April of 2005?

13 ANSWER:

14
15 QUESTION 34. If not, please explain why not.

16 ANSWER:

17
18 QUESTION 35. Is it true that Exhibit 6 to this deposition contains the cover page for the
19 2000 Spokane County employee telephone directory as well as a page listing Ron Hand at
20 477-7235?

21 ANSWER:

22
23 QUESTION 36. If not, please explain why not.

24 ANSWER:

1 QUESTION 37. Please describe any efforts made by County employees/agents to locate and
2 provide any records to the Plaintiff that would have included Ron Hand's name such that he
3 could have been identified on the seating chart at Exhibit 1.

4 ANSWER:
5
6

7 QUESTION 38. Is it true that providing a copy of Exhibit 6 to this deposition would have
8 been responsive to the Neighborhood Alliance's May 16, 2005 request for records (Exhibit 2
9 to this deposition) "that record the following information . . . The identities of 'Ron & Steve',
10 individuals who are situated near the center of the seating chart referenced in Exhibit 1"?

11 ANSWER:
12

13 QUESTION 39. If not, please explain why not.
14

15 ANSWER:
16

17 QUESTION 40. Is it true that as of May 16, 2005, Spokane County had in its possession
18 non-exempt records that contained the name "Ron Hand" in them (e.g. memoranda, emails,
19 letters, directories, etc.)?
20

21 ANSWER:
22

23 QUESTION 41. If not, please explain why not?
24

25 ANSWER:
26

27 QUESTION 42. Is it true that Steve Harris was employed by Spokane County as an
28 Assistant Development Coordinator during April of 2005?
29

30 ANSWER:
31

32 QUESTION 43. If not, please explain why not.
33

1 ANSWER:

2
3 QUESTION 44. Is it true that "Steve" on the seating chart at Exhibit 1 to this deposition was
4 Steve Harris?

5 ANSWER:

6
7 QUESTION 45. If not, please explain why not.

8 ANSWER:

9
10 QUESTION 46. Is it true that as of May 16, 2005, Spokane County had in its possession
11 non-exempt records that contained the name "Steve Harris" in them (e.g. memoranda, emails,
12 letters, directories, etc.)?

13 ANSWER:

14
15 QUESTION 47. If not, please explain why not.

16 ANSWER:

17 QUESTION 48. Please describe any efforts made by County employees/agents to locate and
18 provide any records to the Plaintiff that would have included Steve Harris's name such that
19 he could have been identified on the seating chart at Exhibit 1.

20 ANSWER:

21
22 QUESTION 49. Is it true that providing a copy of at least one record responsive to the
23 previous question would have been responsive to the Neighborhood Alliance's May 16, 2005
24 request for records (Exhibit 2 to this deposition) "that record the following information . . .
25 The identities of 'Ron & Steve', individuals who are situated near the center of the seating
chart referenced in Exhibit 1"?

ANSWER:

PLAINTIFF'S DEPOSITION QUESTIONS TO
SPOKANE COUNTY - 11

Center For Justice
35 West Main, Suite 300
Spokane, WA 99201
(509) 835-5211

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1
2
3 QUESTION 50. If not, please explain why not.

4 ANSWER:
5

6 QUESTION 51. If it is contended that the "Steve" on the seating chart at Exhibit 1 to this
7 deposition was someone other than Steve Harris, please identify that person, and/or why it
8 could not have been Steve Harris.

9 ANSWER:
10

11 QUESTION 52. Please describe any efforts made by Spokane County to clarify what
12 records that Plaintiff was seeking in its May 16, 2005 records request.

13 ANSWER:
14

15 QUESTION 53. What is your full name, job title and relationship with Spokane County?
16

17 ANSWER:
18
19
20
21
22
23
24
25

1 STATE OF WASHINGTON)
2) ss.
3 County of Spokane)

4 _____, being first duly sworn upon oath, deposes and says:

5 That I am an agent or officer of the County of Spokane authorized to respond to these
6 questions; that I have read the foregoing questions and answers thereto, know the contents
7 thereof, and believe the same to be true.

8 _____
9
10 SUBSCRIBED AND SWORN TO before me this _____ day of
11 _____, 2007.

12 _____
13 (Name)

14 NOTARY PUBLIC in and for
15 the State of Washington,
16 residing at Spokane County
17 My Commission expires: _____
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

The undersigned hereby certified under penalty of perjury under the laws of the State of Washington that on September _____, 2007, I caused a true and correct copy of the foregoing document to be served on the following counsel at the addresses shown below in the manner indicated:

Patrick Risken
Attorney for Defendants
Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910

VIA REGULAR MAIL ☐
VIA CERTIFIED MAIL ☐
HAND DELIVERED ☐
BY FACSIMILE ☐
VIA FEDERAL EXPRESS ☐

DATED at Spokane, Washington, this _____ day of September, 2007.

Susan McWhirter, Paralegal

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IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LINCOLN

NEIGHBORHOOD ALLIANCE OF SPOKANE
COUNTY, a non-profit corporation,
Plaintiff,

vs.

COUNTY OF SPOKANE, a political subdivision
of the State of Washington,
Defendant.

Case No.: 06-2-00107-0

DEFENDANT'S OBJECTIONS TO DEPOSITION
QUESTIONS

Defendant County of Spokane hereby states its objections to certain of the Deposition by Written Questions propounded to witness Pamela Knutsen on October 12, 2007, as noted in the Notice of Deposition Upon Written Questions served upon the undersigned counsel on September 7, 2007:

6. Objection. This case involves a request for public documents and a public agency's response thereto. It has nothing to do with computer security or a security breach. See Smith vs. Okanogan County, 100 Wn.App. 7, 994 P.2d 857 (2000) for an explanation of the issues relevant to such a claim.

This question is beyond the scope of discovery inquiry agreed by the parties and allowed by the Court on December 5, 2006.

Without waiving Objection: Ms. Knutsen will answer the question.

DEFENDANT'S OBJECTIONS TO
DEPOSITION QUESTIONS - 1

Evans, Craven & Lackie, P.S.
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Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

1
2 7. Objection. This case involves a request for public documents and a public agency's
3 response thereto. It has nothing to do with the identity of any individual who may have
4 either created a document or "accessed" the document. See Smith vs. Okanogan County,
5 100 Wn.App. 7, 994 P.2d 857 (2000) for an explanation of the issues relevant to such a
6 claim.

7
8 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
9 by the Court on December 5, 2006.

10 Without waiving Objection: Ms. Knutsen will answer this question.

11
12 8. Objection. See Objection to Interrogatory No. 7.

13 Without waiving Objection: Ms. Knutsen will answer this question depending on the
14 answer to the previous question.

15
16 11. Objection. Compound question which is argumentative. Further, this question is
17 beyond the scope of discovery inquiry agreed by the parties and allowed by the Court on
18 December 5, 2006.

19 Without waiving Objection: Ms. Knutsen will answer the question.

20
21 14. Objection. Question calls for information beyond that at issue in a public
22 records case. Under the Public Disclosure Act it is not the obligation of Spokane County
23 to explain the meaning of documents or to otherwise interpret documents that are
24 provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
25 994 P.2d 857 (2000).

26 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
27 by the Court on December 5, 2006.

28
29 15. Objection. Question calls for information beyond that at issue in a public
30 records case. Under the Public Disclosure Act it is not the obligation of Spokane County
to explain the meaning of documents or to otherwise interpret documents that are
provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
994 P.2d 857 (2000).

This question is beyond the scope of discovery inquiry agreed by the parties and allowed
by the Court on December 5, 2006.

DEFENDANT'S OBJECTIONS TO
DEPOSITION QUESTIONS - 2

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1 16. Objection. Question calls for information beyond that at issue in a public
2 records case. Under the Public Disclosure Act it is not the obligation of Spokane County
3 to explain the meaning of documents or to otherwise interpret documents that are
4 provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
994 P.2d 857 (2000).

5 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
6 by the Court on December 5, 2006.

7 17. Objection. Question calls for information beyond that at issue in a public records
8 case. Under the Public Disclosure Act it is not the obligation of Spokane County to
9 explain the meaning of documents or to otherwise interpret documents that are provided
10 pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d
857 (2000).

11 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
12 by the Court on December 5, 2006.

13 18. Objection. Question calls for information beyond that at issue in a public records case.
14 Under the Public Disclosure Act it is not the obligation of Spokane County to explain the
15 meaning of documents or to otherwise interpret documents that are provided pursuant to a
request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000).

16 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
17 by the Court on December 5, 2006.

18 19. Objection. Question calls for information beyond that at issue in a public records case.
19 Under the Public Disclosure Act it is not the obligation of Spokane County to explain the
20 meaning of documents or to otherwise interpret documents that are provided pursuant to a
request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000).

21 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
22 by the Court on December 5, 2006.

23 20. Objection. Question calls for information beyond that at issue in a public records case.
24 Under the Public Disclosure Act it is not the obligation of Spokane County to explain the
25 meaning of documents or to otherwise interpret documents that are provided pursuant to a
request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000).

26 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
27 by the Court on December 5, 2006.

28 21. Objection. Question calls for information beyond that at issue in a public records case.

29 DEFENDANT'S OBJECTIONS TO
30 DEPOSITION QUESTIONS - 3

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(509) 455-5200; fax (509) 455-3632

1 Under the Public Disclosure Act it is not the obligation of Spokane County to explain the
2 meaning of documents or to otherwise interpret documents that are provided pursuant to a
3 request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000).

4 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
5 by the Court on December 5, 2006.

- 6 22. Objection. Question calls for information beyond that at issue in a public records case.
7 Under the Public Disclosure Act it is not the obligation of Spokane County to explain the
8 meaning of documents or to otherwise interpret documents that are provided pursuant to a
9 request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000).

10 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
11 by the Court on December 5, 2006.

- 12 23. Objection. Question calls for information beyond that at issue in a public records case.
13 Under the Public Disclosure Act it is not the obligation of Spokane County to explain the
14 meaning of documents or to otherwise interpret documents that are provided pursuant to a
15 request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000).

16 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
17 by the Court on December 5, 2006.

- 18 24. Objection. Question is not consistent with what was requested by Plaintiff in its May
19 16, 2005, written request. Under the Public Disclosure Act it is not the obligation of
20 Spokane County to create documents or to explain the meaning of documents that are
21 provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
22 994 P.2d 857 (2000).

23 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
24 by the Court on December 5, 2006.

- 25 25. Objection. Argumentative.

26 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
27 by the Court on December 5, 2006.

28 Further Objection: relevance. The telephone directory referenced in the Interrogatory
29 was apparently placed into service at Spokane County two (2) years before the Plaintiff's
30 request for records.

Without waiving Objections: Ms. Knutsen will answer the question.

DEFENDANT'S OBJECTIONS TO
DEPOSITION QUESTIONS - 4

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1 26. Objection. See Objection to Interrogatory No. 25.

2
3 Without waiving Objection: Ms. Knutsen will answer this question.

4 27. Objection. Question is overly broad and seeks irrelevant information: it seeks to
5 involve documents which are beyond the scope of the Plaintiff's May 16, 2005, Public
6 Disclosure Act request. This question is beyond the scope of discovery inquiry agreed by
7 the parties and allowed by the Court on December 5, 2006.

8 28. Objection. See Objection to Interrogatory No. 27.

9 29. Objection. Question calls for information beyond that at issue in a public
10 records case. Under the Public Disclosure Act it is not the obligation of Spokane County
11 to explain the meaning of documents or to otherwise interpret documents that are
12 provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
13 994 P.2d 857 (2000). This question goes beyond the request for public, non-exempt
14 documents and Spokane County's efforts to locate those documents, if they existed, and
15 its response to the request.

16 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
17 by the Court on December 5, 2006.

18 30. Objection. See Objection to Interrogatory No. 29.

19 31. Objection. Objection. Question calls for information beyond that at issue in a
20 public records case. Under the Public Disclosure Act it is not the obligation of Spokane
21 County to explain the meaning of documents or to otherwise interpret documents that are
22 provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
23 994 P.2d 857 (2000). This question goes beyond the request for public, non-exempt
24 documents and Spokane County's efforts to locate those documents, if they existed, and
25 its response to the request.

26 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
27 by the Court on December 5, 2006.

28 32. Objection. Question calls for information beyond that at issue in a public
29 records case. Under the Public Disclosure Act it is not the obligation of Spokane County
30 to explain the meaning of documents or to otherwise interpret documents that are
provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
994 P.2d 857 (2000). This question goes beyond the request for public, non-exempt
documents and Spokane County's efforts to locate those documents, if they existed, and
its response to the request.

DEFENDANT'S OBJECTIONS TO
DEPOSITION QUESTIONS - 5

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(509) 455-5200; fax (509) 455-3632

1 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
2 by the Court on December 5, 2006.

- 3
4 33. Objection. Question calls for information beyond that at issue in a public
5 records case. Under the Public Disclosure Act it is not the obligation of Spokane County
6 to explain the meaning of documents or to otherwise interpret documents that are
7 provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
8 994 P.2d 857 (2000). This question goes beyond the Plaintiff's May 16, 2005, request for
9 public, non-exempt documents and Spokane County's efforts to locate those documents, if
10 they existed, and its response to the request.

11 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
12 by the Court on December 5, 2006.

- 13 34. Objection. Question calls for information beyond that at issue in a public
14 records case. Under the Public Disclosure Act it is not the obligation of Spokane County
15 to explain the meaning of documents or to otherwise interpret documents that are
16 provided pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7,
17 994 P.2d 857 (2000). This question goes beyond the Plaintiff's May 16, 2005, request for
18 public, non-exempt documents and Spokane County's efforts to locate those documents, if
19 they existed, and its response to the request.

20 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
21 by the Court on December 5, 2006.

- 22 35. Objection. Argumentative.

23 Further Objection: relevance. The telephone directory referenced in the Interrogatory
24 was apparently placed into service at Spokane County five (5) years before the Plaintiff's
25 request for records.

26 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
27 by the Court on December 5, 2006.

- 28 36. Objection. See Objection to Interrogatory No. 35.

- 29 37. Objection. Question is not consistent with what was requested in the May 16, 2005,
30 records request and therefore beyond the scope of the agreed discovery parameters.

This question is beyond the scope of discovery inquiry agreed by the parties and allowed
by the Court on December 5, 2006.

DEFENDANT'S OBJECTIONS TO
DEPOSITION QUESTIONS - 6

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(509) 455-5200; fax (509) 455-3632

1
2 38. Objection. Argumentative.

3 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
4 by the Court on December 5, 2006.

5 Further Objection: relevance. The telephone directory referenced in the Interrogatory
6 was apparently placed into service at Spokane County two (2) years before the Plaintiff's
7 request for records.

8 Without waiving Objection: Ms. Knutsen will answer the question.

9
10 39. Objection. See Objection to Interrogatory No. 38.

11 Without waiving Objection: Ms. Knutsen will answer this question.

12 40. Objection. Question is overly broad and seeks irrelevant information: it seeks to
13 involve documents which are beyond the scope of the Plaintiff's May 16, 2005, Public
14 Disclosure Act request and the scope of the discovery agreed in court on December 5,
15 2006.

16 41. Objection. See Objection to Interrogatory No. 40.

17 42. Objection. Question calls for information beyond that at issue in a public records
18 case. Under the Public Disclosure Act it is not the obligation of Spokane County to
19 explain the meaning of documents or to otherwise interpret documents that are provided
20 pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d
21 857 (2000). This question goes beyond the Plaintiff's May 16, 2005, request for public,
22 non-exempt documents and Spokane County's efforts to locate those documents, if they
23 existed, and its response to the request.

24 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
25 by the Court on December 5, 2006.

26 43. Objection. See Objection to Interrogatory No. 42.

27 44. Objection. Question calls for information beyond that at issue in a public records
28 case. Under the Public Disclosure Act it is not the obligation of Spokane County to
29 explain the meaning of documents or to otherwise interpret documents that are provided
30 pursuant to a request for records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d
857 (2000). This question goes beyond the Plaintiff's May 16, 2005, request for public,
non-exempt documents and Spokane County's efforts to locate those documents, if they

DEFENDANT'S OBJECTIONS TO
DEPOSITION QUESTIONS - 7

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1 existed, and its response to the request.

2 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
3 by the Court on December 5, 2006.

4 45. Objection. See Objection to Interrogatory No. 44.

5 46. Objection. Question is overly broad and seeks irrelevant information: it seeks to
6 involve documents which are beyond the scope of the Plaintiff's May 16, 2005, Public
7 Disclosure Act request.

8 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
9 by the Court on December 5, 2006.

10 47. Objection. See Objection to Interrogatory No. 46.

11 48. Objection. Question is overly broad since it is beyond the scope of the Plaintiff's
12 May 16, 2005, Public Disclosure Act request; the deposition question inaccurately
13 represents what was requested by the Plaintiff on May 16, 2005. Under the Public
14 Disclosure Act it is not the obligation of Spokane County to explain the meaning of
15 documents or to otherwise interpret documents that are provided pursuant to a request for
16 records. *Smith vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000). This question
17 goes beyond the Plaintiff's May 16, 2005, request for public, non-exempt documents and
18 Spokane County's efforts to locate those documents, if they existed, and its response to
19 the request.

20 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
21 by the Court on December 5, 2006.

22 49. Objection. The question makes no sense in light of its reference to the previous
23 Interrogatory, which seeks a description of record-gathering effort and not the actually
24 description of any documents. Under the Public Disclosure Act it is not the obligation of
25 Spokane County to explain the meaning of documents or to otherwise interpret documents
26 that are provided pursuant to a request for records. *Smith vs. Okanogan County*, 100
27 Wn.App. 7, 994 P.2d 857 (2000). This question goes beyond the Plaintiff's May 16,
28 2005, request for public, non-exempt documents and Spokane County's efforts to locate
29 those documents, if they existed, and its response to the request.

30 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
by the Court on December 5, 2006.

50. Objection. See Objections to Interrogatories No. 48 and 49.

DEFENDANT'S OBJECTIONS TO
DEPOSITION QUESTIONS - 8

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(509) 455-5200; fax (509) 455-3632

484

1 51. Objection. Question is argumentative; the question seeks to information which is
2 beyond the scope of the Plaintiff's May 16, 2005, Public Disclosure Act request. Under
3 the Public Disclosure Act it is not the obligation of Spokane County to explain the
4 meaning of documents, engage in argument over the meaning of documents or to
5 otherwise interpret documents that are provided pursuant to a request for records. *Smith*
6 *vs. Okanogan County*, 100 Wn.App. 7, 994 P.2d 857 (2000). This question goes beyond
7 the Plaintiff's May 16, 2005, request for public, non-exempt documents and Spokane
8 County's efforts to locate those documents, if they existed, and its response to the request.

9 This question is beyond the scope of discovery inquiry agreed by the parties and allowed
10 by the Court on December 5, 2006.

11 52. Objection. The Interrogatory assumes that a public agency has a duty to seek
12 clarification of what a requester is actually seeking and such a duty does not exist under
13 the Public Disclosure Act.

14 DATED this 12th day of October, 2007.

15 EVANS, CRAVEN & LACKIE, P.S.

16 By 

17 PATRICK M. RISKEN, #14632
18 Attorneys for Defendant
19
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29 DEFENDANT'S OBJECTIONS TO
30 DEPOSITION QUESTIONS - 9

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4857